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A DIGEST OF THE DECISIONS

77

OF THE

SUPREME COURT OF MICHIGAN

FROM

JANUARY 1843 TO OCTOBER 1888

77

ALSO OF THE

COURT OF CHANCERY

FROM

1836 TO 1845

AND ALSO OF THE

SUPREME COURT OF THE UNITED STATES

SO FAR AS THEY

RELATE TO MICHIGAN LAW

BY

ALBERT POOLE JACOBS

AUTHOR OF A REFERENCE DIGEST OF THE MICHIGAN REPORTS
VOLUME I (1881) VOLUME II (1888) AND OF THE INDEXES
TO VOLUMES 43 TO 49, 56 AND 58 OF THOSE REPORTS

AND BY

HENRY ALLEN CHANEY

AUTHOR OF A SUPPLEMENTAL DIGEST OF THE MICHIGAN RE-
PORTS (1876) AND REPORTER OF VOLUMES 37 TO 56

VOL. II

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1887, 1888

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Soon after the first volume of this work was published, and when almost the whole of the text of the second volume was in type, arrangements were made for the early appearance of the delayed official reports; and by awaiting the result of those arrangements, and making the corresponding insertions, the second half of the digest is enabled to present official volume references for all, and page references for nearly all, the cases that it includes. In the table of cases are included all citations of Michigan reported cases found in our own reports or in those of the supreme court of the United States.

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DIGEST

OF

MICHIGAN DECISIONS.

JUDGMENTS.

I. RENDITION.

- (a) *Nature; form.*
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 - 2. Joint and several.
- (b) *Upon what based.*
- (c) *Confession of judgment.*
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I. RENDITION.

(a) *Nature; form.*

1. In general.

As to decrees, see EQUITY, XII, (a), 1.

As to justices' judgments, see JUSTICES OF THE PEACE, V, (a), 1.

1. Rendition of judgment is a judicial act, requiring a court to be held, and it is void if done on Sunday: *Hemmens v. Bentley*, 32 M. 89.

2. A judgment is the final consideration and determination of a court of competent jurisdiction upon the matters submitted to it: *Whitwell v. Emory*, 3 M. 84.

3. A judgment is the decision or sentence of the law, given by a court of justice or other competent tribunal, as the result of proceedings instituted therein: *Crippen v. People*, 8 M. 117.

4. A recital in an order has no force as an adjudication if it relates to a matter not alleged in the pleadings and not put in issue: *Rice v. Rice*, 50 M. 448.

5. The statute does not require a finding of facts and conclusions of law to be incorporated into the judgment on a trial by the court without a jury: *Lorman v. Benson*, 9 M. 237.

6. On overruling a demurrer, judgment goes for plaintiff, unless defendant is given leave to plead; such leave may be conditioned as the case requires: *Tefft v. McNoah*, 9 M. 201.

7. On overruling a demurrer a court can do no more than award an interlocutory judgment: *Mason v. Reynolds*, 33 M. 60.

8. The only object of an interlocutory judgment is to direct the ascertainment of damages for the purposes of a final judgment; and

its form is immaterial if the method of assessment is correct: *Wilcox v. Sweet*, 24 M. 355.

9. A court cannot render final judgment on the whole record upon demurrer to certain counts in the declaration while an issue of fact is pending on other counts: *Bosman v. Akeley*, 39 M. 710.

9a. Judgment on demurrer goes against the pleader committing the first error in substance, not in form merely: *Wales v. Lyon*, 2 M. 276; *People v. Hartwell*, 12 M. 508; *People v. Miller*, 16 M. 56.

10. Judgment as in case of nonsuit is rendered against a plaintiff who fails to appear on trial before a referee: *Abbott v. Mathews*, 26 M. 176.

11. The county judge, in his return to a *certiorari*, set forth that he rendered judgment of "no cause of action, nonsuit, I think;" but as the judgment was rendered upon proofs and a submission on the merits, it was held to be in law a judgment for defendant, and not a nonsuit: *Lee v. Hardgrave*, 3 M. 77.

12. Pleas of abatement to the jurisdiction were filed by several defendants, one of whom was a railway company. Both were tried, but in giving judgment the court, while reciting only that the railway company had pleaded in abatement, ordered that the declaration of "said plaintiffs be quashed, and that the said defendants go thereof without day; and that said defendants do recover of and from the plaintiffs its costs and charges by it in its defence in this behalf expended." Held, that the word "defendants" in this judgment referred only to the railway company: *Barnes v. Michigan Air Line R. Co.*, 54 M. 243.

13. A judgment rendered in favor of two plaintiffs after the death of one of them cannot be sustained by showing that the deceased plaintiff left a son surviving him who was living when judgment was rendered: *Teller v. Wetherell*, 9 M. 484.

14. A judgment given in a suit at law brought without leave pending foreclosure in chancery is not invalid: *Goodrich v. White*, 39 M. 489.

2. Joint and several.

15. A judgment for a joint conversion cannot include a defendant who was not served with process and who did not appear: *McLean v. Isbell*, 44 M. 129.

16. H. S. §§ 7730, 7732, authorizing judgment, etc., in form against joint debtors though only one has been served with process, held valid: *Brooks v. McIntyre*, 4 M. 316.

17. H. S. § 7730, concerning joint debtors,

applies to all joint undertakings or liabilities, and covers obligations that are joint and several as well as those that are joint: *Goebel v. Stevenson*, 35 M. 172.

18. The proceedings for joint judgments when part only of joint debtors are served are special and statutory, and cannot be extended: *Hamilton v. Plumer*, 67 M. 135 (Oct. 6, '87).

19. Plaintiff in an action against joint defendants is allowed to proceed on service against only one defendant. But process must issue against all, and the intentional omission to serve either defendant, if seasonably found within the jurisdiction, would be an abuse of the writ. And the judgment, though joint in form, preserves all rights which defendants would have at common law: *Ralston v. Chapin*, 49 M. 274.

20. Joint judgment may be entered on a joint obligation against parties, one of whom is outside of the jurisdiction and cannot therefore be lawfully served: *Gunzberg v. Miller*, 39 M. 80.

21. Joint judgment cannot be entered against several defendants when service of process against a portion of them has neither been made nor attempted: *Proctor v. Lewis*, 50 M. 329.

22. The contracts of the maker of a note and of the indorser are several, and do not authorize a joint judgment upon lawful service on only one of them: *Church v. Edson*, 39 M. 113.

23. A separate verdict against one of several joint parties will not authorize a judgment against all where there has been no assessment against the rest: *Ellison v. Marquette Circuit Judge*, 41 M. 222.

Joint judgment upon verdict against one defendant and assessment against the other, see **BILLS AND NOTES**, § 357.

24. In an action against two defendants, as upon their joint promise, plaintiff cannot recover if he fails to show a joint undertaking: *Mace v. Page*, 33 M. 88.

25. In an action upon a joint or upon a joint and several obligation, plaintiff cannot have judgment against less than all the defendants: *Winslow v. Herrick*, 9 M. 380; *Bal-lou v. Hill*, 23 M. 60; *Larkin v. Butterfield*, 29 M. 254; *Anderson v. White*, 39 M. 130; *Detroit v. Houghton*, 42 M. 459; *Munn v. Haynes*, 46 M. 140; *Post v. Shafer*, 63 M. 85; *Seligman v. Gray*, 66 M. 84 (June 18, '87).

26. Except where one debtor has been legally discharged, or where, in fact, there was never any joint obligation: *Post v. Shafer*, 63 M. 85.

27. And where an exception is admitted in

consequence of some defence that is purely personal, like infancy, good practice requires that, as a preliminary to judgment against the others, there should be a discontinuance as to the exempt party and an amendment of the record. In a particular case a severance on the record before judgment, and the entry of separate judgments, were held to have accomplished substantial justice without circuity, and such action was sustained: *Reading v. Beardsley*, 41 M. 123.

28. Where two defendants against whom there had been a joint award were sued thereon, a judgment against one was held erroneous: *Ballou v. Hill*, 23 M. 60.

29. So, where a joint judgment is recovered on a joint demand and one defendant dies, pending appeal, judgment cannot be taken against the other in the circuit court: *Anderson v. Robinson*, 38 M. 407.

30. Suit cannot be brought against an individual party to a joint contract, and judgment taken upon it, without giving defendant an opportunity to plead non-joinder in abatement: *Munn v. Haynes*, 46 M. 140.

31. Where one of three joint debtors was proceeded against by garnishee process, and a judgment recovered, it was held that the judgment was void, and no bar to a subsequent suit against all three on the joint demand: *Wetherwax v. Paine*, 2 M. 555.

32. One who has sued a firm and obtained a verdict against one partner only cannot complain of a judgment rendered in his favor against the other partner, whatever such other might do: *Roberts v. Pepple*, 55 M. 367.

33. In an action upon a promissory note plaintiff need not include all the parties in one judgment, but may have judgment against any of the parties against whom he could have proceeded separately: *Phelps v. Church*, 65 M. 281 (Feb. 15, '87).

34. However, severance in the case of persons purporting to be joint makers of a note, and who are so sued, is not contemplated by H. S. §§ 7345-7347: *Reading v. Beardsley*, 41 M. 123.

35. Nor, where several persons are sued as copartners upon a note signed in the name of a company, does H. S. § 7347 allow judgment against those only who are shown to be members of the company: *Anderson v. White*, 89 M. 130.

36. H. S. § 8727, which allows judgment to be given against such defendants on a joint contract as remain liable while others are released by the statute of limitations, does not allow a separate judgment in a case where the party against whom the statute would other-

wise have run was never legally bound; as where it appears that such party entered into the contract as a surety for her husband: *Reading v. Beardsley*, 41 M. 123.

37. In an action brought upon a joint obligation of husband and wife, a judgment against the husband alone is erroneous unless it is affirmatively shown that the obligation was one she could not legally make: *Post v. Shafer*, 68 M. 85.

38. In an action against the maker and indorser of a promissory note, where several pleas are filed and issue is joined as to both defendants, plaintiff cannot sever, but must proceed to trial against all, though he may move for judgment against one defendant only. But proper severance was presumed on error, and the judgment sustained, where the record showed no objection taken to the trial of the separate issue: *Maynard v. Penniman*, 10 M. 153.

(b) Upon what based.

See EQUITY, XII, (a), 2; JUSTICES OF THE PEACE, V, (a), 2.

See, as to defaults, DEFAULT, §§ 1-20.

39. A declaration for injuries inflicted by defendant's dogs contained two counts upon the common-law liability and one upon H. S. § 2119, allowing double damages. Held, that a verdict for defendant upon the common-law counts was not inconsistent with one for plaintiff on the other, as the counts could not, as matter of law, be said to be for the same cause of action, and that the court did not err in refusing to give judgment for defendant on the whole record with costs on the issues found in his favor: *Swift v. Applebone*, 23 M. 252.

As to judgment in cases where double or treble damages are claimed, see DAMAGES, §§ 410, 411, 434-443.

40. No final judgment as to costs can be given until the amount of damages is found: *Hemingway v. Peter*, 25 M. 202.

41. A judgment for interest, where there are no data showing how much was due, amounts to a mistrial: *Bell v. Ardis*, 38 M. 609.

42. A party on a note has always a right to suppose that judgment will not be taken upon it for a larger sum than appears upon its face to be due, and he is under no obligation to watch the proceedings to see that a judgment in excess is not taken: *Mitchell v. Shuert*, 16 M. 444.

43. A judgment in excess of the damages claimed in the declaration is erroneous, and

cannot be cured by an amendment *nunc pro tunc* of the *ad damnum* clause: *Kenyon v. Woodward*, 16 M. 326.

44. An insignificant excess of interest allowed in a judgment will be overlooked: *Bowen v. Rutland School District*, 36 M. 149.

45. Judgment cannot be rendered on an alleged state of facts which has not been found, nor be given for damages if there is no finding of damages set forth in the record: *Wiley v. Lovely*, 46 M. 83.

46. When the jury's special findings refer directly to documents they can be understood only by comparing them with the documents, and where such reference is made, and a court is called upon to apply the verdict, it must be treated as embodying such documents by reference: *Gilbert v. American Ins. Co.*, 30 M. 400.

47. A verdict must always be read in the light of the pleadings, and when it refers to documents annexed to it, they must be regarded as incorporated in it; and if not annexed, the verdict may be aided by the judge's notes, where they will suffice for that purpose: *Keeler v. Robertson*, 27 M. 116.

48. In determining, for the purpose of judgment, the consistency of the general verdict with the special finding, the trial court may be aided by its knowledge of the facts as developed on the trial; more than a mere comparison of the language of the verdict and findings is required: *Gilbert v. American Ins. Co.*, 30 M. 400.

49. Judgment can be rendered upon special findings of fact, and against the general verdict, as being inconsistent therewith, only where, after all presumptions are made in favor of harmony, the special findings cannot be reconciled with the general one: *Foster v. Gaffield*, 84 M. 356.

50. Special questions to the jury and the answers thereto are to be applied to the record only, and not by outside explanations; and where the record leaves such question and finding meaningless or irrelevant, they cannot control a general verdict: *Ibid.*

51. A special finding that is immaterial in itself and is based on an erroneous instruction does not preclude the right to a judgment on other findings: *Detroit, G. H. & M. R. Co. v. Hayt*, 55 M. 347.

52. When the cause is tried by the judge alone, and a finding of facts is seasonably demanded, there is nothing, until such finding is made, upon which to found a judgment: *Stansell v. Corning*, 21 M. 242.

53. A finding of facts will not support a

judgment for plaintiff if it does not contain all that is essential to the plaintiff's recovery: *Burdick v. Chamberlain*, 38 M. 610; *Peck v. City National Bank*, 51 M. 353.

54. If the findings of fact support the judgment rendered, it is unimportant whether or not the conclusions of law, apart from the judgment, are correct: *Nelson v. Ferris*, 30 M. 497.

55. Where, upon a trial by the court without a jury, judgment has passed for defendant, and the facts found show the plaintiff was not entitled to judgment, the reasons stated by the court for its conclusions are immaterial: *Botsford v. Simmons*, 32 M. 352.

56. Where no basis is shown for a judgment for plaintiff, if there has been no mistrial defendant must have judgment; and it is immaterial whether the reason assigned for it is correct or not: *Seeley v. Albrecht*, 41 M. 525.

57. A judgment cannot be based upon a judge's special finding which consists merely of an informal statement made up of facts, items of evidence, offers of proof, rulings on objections and an opinion on the result: *Steele v. Matteson*, 50 M. 313.

58. A judgment for plaintiff cannot be based upon a mere statement by a referee as to what sums he should allow: *Weirich v. Cook*, 39 M. 134.

59. The power to render judgments against sureties on bonds in legal proceedings, without a separate action, is statutory, and cannot be extended by implication: *Willard v. Fralick*, 31 M. 431.

As to such judgments, see APPEAL, §§ 373, 374, 484, 485; CERTIORARI, §§ 213, 214; COSTS, §§ 349-354.

As to summary entry of judgment on forfeited criminal recognizance, see CONSTITUTIONS, § 39.

60. A judgment was taken against P. and F. on their joint covenant that P. should pay all costs and damages that should be awarded against him in a certain cause. The entry did not show that it was shown to the court, nor did the record show it to be certified by the clerk, which of the defendants was principal, and which surety or bail (R. S. 1838, p. 451, § 9). Held no ground for reversing the judgment: *Prentiss v. Spalding*, 2 D. 84.

61. Judgment for plaintiff cannot be rendered upon a stipulation of facts that does not unequivocally show a liability: *Gillett v. Detroit Board of Trade*, 46 M. 309.

As to conditional stipulation for judgment, see EVIDENCE, § 300.

(c) *Confession of judgment.*

See JUSTICES OF THE PEACE, V, (a), 3.

62. A judgment upon a bond and warrant of attorney as provided by the statute may be entered in vacation: *Watkins v. Wallace*, 19 M. 57.

63. It is no objection to a judgment entered up in the circuit court by confession that the warrant of attorney is upon the same piece of paper as the note it authorizes judgment to be taken upon. The warrant of attorney and note are still to be regarded as separate instruments (H. S. § 7662), notwithstanding they are thus connected: *Trombly v. Parsons*, 10 M. 272.

64. The note and warrant of attorney bearing different dates are presumed to have been executed at the times they respectively bear date, notwithstanding they are upon the same paper: *Ibid.*

65. But it would not be a valid objection to a judgment taken by confession that they were both executed at the same time: *Ibid.*

66. A warrant of attorney need not be proved to sustain a confession of judgment taken thereunder within a year and a day after its execution: *Elliott v. Ives*, 44 M. 190.

67. An infant cannot, in his own name, confess judgment: *Soper v. Fry*, 37 M. 286.

68. A judgment confessed by an infant's partner in the name of the firm is void, and will not support an attachment as against a previous assignee of the goods attached: *Ibid.*

69. Partners have no implied authority to confess judgment for each other: *Ibid.*

(d) *Entry; record.*

Of decrees, see EQUITY, XII, (a), 3.

Of justices' judgments, see JUSTICES OF THE PEACE, V, (a), 4.

70. A judgment does not exist until put in due form by the court: *Green v. Eaton Probate Judge*, 40 M. 244.

71. No formal judgment record need be made up in the circuit court except when required by one of the parties: *Emery v. Whitwell*, 6 M. 474.

72. Under our practice the files and journal entries of the circuit court are a substitute for the judgment record: *Norvell v. McHenry*, 1 M. 227; *Crane v. Hardy*, 1 M. 56; *Prentiss v. Holbrook*, 2 M. 372; *Whitwell v. Emory*, 8 M. 84; *Emery v. Whitwell*, 6 M. 474; *Kenyon v. Baker*, 16 M. 373; *Hovey v. Smith*, 22 M. 170.

73. In an auxiliary proceeding in garnishment the judgment against the principal

debtor may be proved by the judgment entry merely: *Strong v. Hollon*, 39 M. 411.

74. The practice of the courts of this state authorizing the files and journal entries to be used in place of a record does not dispense with any of the essential requisites and evidences of a judgment. An order for final judgment must not only ascertain the determination of the court upon the matters submitted, but the parties in favor of and against whom it operates: *Whitwell v. Emory*, 8 M. 84.

75. The time of entering judgment after verdict is a matter of practice within the discretion of the court: *Harvey v. McAdams*, 32 M. 472.

76. The entry of a judgment fifteen days after verdict, though a stay of proceedings granted for the purpose of giving time to make a motion in arrest of judgment and for a new trial has not yet expired, is not error: the judgment is only provisional, and does not deprive a party of the right to move for a new trial: *Ibid.*

77. Judgment on a special finding filed in vacation in a civil case must be entered as of the last day of the preceding term or it will be irregular: *Steele v. Matteson*, 50 M. 313.

78. Entry of judgment *nunc pro tunc* will not cure an antecedent levy and sale as against persons who have bought the premises in good faith, and after the levy and sale were set aside, reasonably supposing the judicial proceedings to be abandoned. So held where judgment was not entered on a verdict for sixteen years and the premises were bought in eight: *Ninde v. Clark*, 62 M. 124.

79. A judgment, the entry of which was corrected by *mandamus*, was ordered to take effect from the date of the correction, so that full opportunity to ask for a review thereof might be saved: *Frederick v. Mecosta Circuit Judge*, 52 M. 529.

(e) *Amendment.*

See EQUITY, XII, (d); JUSTICES OF THE PEACE, V, (a), 5.

80. A judgment cannot be materially changed, if at all, without giving notice to the party injured by such action: *Green v. Eaton Probate Judge*, 40 M. 244.

81. An entry of judgment in the journal of the court may properly be corrected by order of the judge if nobody has been misled by the error, and the party against whom the judgment was rendered knew what it actually was and took action accordingly: *Souvais v. Leavitt*, 53 M. 577.

82. The clerk's entries may, even after

error brought, be amended in affirmance of the judgment: *The Milwaukee v. Hale*, 1 D. 306.

83. Where the files and records in the case clearly show that the court intended to render a certain judgment, to which the party was entitled, but the entry actually made was defective, the court may amend the record to what it should have been at any time thereafter: *Emery v. Whitwell*, 6 M. 474.

84. Notice of the application to amend the record is not necessary in such case, because the effect of the record is not changed by it, and no one's rights are affected: *Ibid*.

85. But no actual amendment need be made. The whole record shall be read, when brought up collaterally, precisely as if the amendments due as a matter of right had actually been made: *Ibid*.

86. Formal inaccuracies in the entry of a judgment are cured by the statute of amendments: *Hall v. Grovier*, 25 M. 428.

87. That statute also cures technical errors in awarding interlocutory judgment, ordering an assessment of damages and giving final judgment, if on the entire record the result should not be disturbed: *Whittemore v. Stephens*, 48 M. 578.

88. Where the judgment entered upon special findings of fact was one appropriate to *assumpsit*, not, as it should have been, to trespass, the imperfection is cured by the statute of amendments; and, moreover, a proper judgment could be entered in the supreme court on the findings: *Ferton v. Feller*, 83 M. 199.

89. After a trial without a jury and judgment for plaintiff in the ordinary form, defendant moved for a new trial, and the court set aside the order for judgment and immediately entered judgment again for the same amount, embodying therein a finding of the facts and law by the judge. Defendant brought error, contending that the court could not wholly set aside and vacate a judgment without granting a new trial. *Held*, that the action of the court amounted substantially to an amendment of the judgment, and was not erroneous. But the amendment was unnecessary, as the statute does not require the judge's finding to be embraced in the judgment: *Lorman v. Benson*, 9 M. 237.

90. Where, by clerical error in entering judgment in replevin, the damages for detention were recited at \$120 instead of six cents, the error was *held* cured by the statute of jeofails: *Lyman v. Becannon*, 29 M. 466.

91. The right to amend ought not to be confined any further than safety requires, and should be liberally recognized wherever the

record itself furnishes the data for the amendment. But where it is based on an outside showing, all practicable precautions should be taken to see that no one is wronged, and the party adversely interested ought always to be notified, where possible, especially if the proceedings are ancient: *Montgomery v. Merrill*, 86 M. 97.

92. An application for leave to amend defective proceedings comes too late when not made until seventeen years have passed; and though the defect remained for a long time undetected, a delay of three years or more after its detection is not excused by the mere fact that the circuit judge had been of counsel and was incompetent to hear the application. The utmost promptness is required in moving to correct mistakes in the record: *Ibid*.

93. Although under our statute courts may amend clerical errors at any time, yet, after the term, that which enters into the consideration of the court, and forms a part of the judgment, cannot be changed; nor can courts at a subsequent term, under the form of an amendment, render a judgment: *Whitwell v. Emory*, 3 M. 84.

94. A court of record, in which judgment has been rendered against two persons, may on motion amend the judgment record by striking out the name of one defendant who appears to have been sued as indorser of the note declared on, but who was not served: *Arnold v. Nye*, 23 M. 286.

95. When John R. Wyllie and John Wyllie were by mistake named as plaintiffs, instead of John R. Wyllie and Hannah Wyllie, an amendment was properly allowed on the trial inserting the right name wherever necessary, and the judgment was admissible in evidence although the entry thereof showed the same mistake: *Barmon v. Clippert*, 58 M. 877.

96. The incorporation by amendment into a judgment of matter that is mere surplusage does not vitiate: *Lorman v. Benson*, 9 M. 237.

97. The right to an amendment *held* to have been waived by delay for several terms and by proceeding on execution: *Gray v. Saginaw Circuit Judge*, 49 M. 628.

II. VALIDITY AND EFFECT.

That judgment creates no lien, see LIENS, § 8.

(a) *Setting aside or vacating.*

See EQUITY, XII, (e); JUSTICES OF THE PEACE, V, (b), 1.

As to granting new trials in general, see PRACTICE, III, (g).

Relief in chancery against judgments, see EQUITY, §§ 504-523.

96. A judgment rendered by the late supreme court when but two of the judges were present who had heard the argument of the case is irregular, and will be vacated on motion, though more than a term has elapsed since its entry: *Jagger v. Coon*, 5 M. 81.

99. A judgment on issue joined, which is rendered without notice of trial or appearance at the trial, though not void is irregular, and should be set aside: *People v. Bacon*, 18 M. 247.

100. The circuit court may set aside a judgment at a term subsequent to its rendition: *Van Renselaer v. Whiting*, 12 M. 449; *Campau v. Coates*, 17 M. 285.

101. A client whose attorney has neglected his case and suffered judgment to pass against him, but who has himself been guilty of no laches, is not confined to his remedy against the attorney, but the court in the exercise of its discretion may set aside the judgment and allow him to defend though a term has elapsed: *Loree v. Reeves*, 2 M. 183.

102. In a suit against a non-resident the circuit court may, in the exercise of a sound discretion, set aside the judgment and permit defendant to plead, where he has had no notice of the proceedings and has been guilty of no laches. And this though a term has elapsed: *Hurlburt v. Reed*, 5 M. 80.

103. Where there has been no unnecessary delay, and where the rights of third persons will not be prejudiced, the circuit court has power to vacate, on motion, a judgment erroneously entered, and to enter the proper judgment: *Frederick v. Mecosta Circuit Judge*, 52 M. 529.

104. A motion to set aside a judgment for irregularity, made two years after it was rendered, the delay being unexplained, is too late: *People v. Calhoun Circuit Judges*, 1 D. 417.

105. Where it is claimed that a judgment has been obtained by fraud the proper remedy, after a lapse of five or six years, is not a motion based on *ex parte* affidavits to set it aside, but resort should be had to an original suit, where a distinct issue may be made by pleadings, and tried upon oral examination of witnesses. An order setting aside judgment on such a motion after such a lapse of time, and while a suit in equity in which considerable progress had been made, and in which like relief was sought, was still pending, was held erroneous: *Jennison v. Haire*, 29 M. 207.

106. Dismissal of an appeal from the probate of a will is a final judgment which re-

mands the proceedings to the probate court, and which cannot be set aside if not complained of within the two years allowed for removing proceedings to the supreme court on error or *certiorari*: *Ellair v. Wayne Circuit Judge*, 46 M. 496.

107. After the probate court has put into the form of a decree its final adjudication upon the merits, it cannot review or set aside such decree: *Grady v. Hughes*, 64 M. 540; *Holden v. Lathrop*, 65 M. 652 (April 28, '87).

108. A stipulation between the parties that a judgment should be set aside without costs upon the reversal, on writ of error, of another judgment, upon certain specified conditions, has no binding force without compliance with the conditions, and the court should not act upon it: *Roche v. Branch Circuit Judge*, 26 M. 870.

109. Where a new trial is granted on conditions the judgment remains in force subject to the conditions, and is not absolutely vacated until they are performed: *Mabley v. Superior Court Judge*, 41 M. 81.

110. The discontinuance, upon stipulation, of a writ of error does not vacate the judgment below: *Cummerford v. Paulus*, 66 M. 648 (July 7, '87).

111. A payment or settlement of a judgment, not vacating it, leaves its judicial force continuing: *Ibid*.

112. A judgment in an attachment suit cannot be set aside for irregularity, on the motion of a person to whom the property attached had been conveyed by the defendant, after service of the attachment, but who is a stranger to the record: *People v. Calhoun Circuit Judges*, 1 D. 417.

113. Where the court makes an order vacating a judgment as to one of two joint debtors, the effect is to vacate it as to both: *Van Renselaer v. Whiting*, 12 M. 449.

114. Where a judgment against two is set aside as to one, but all concerned treat it as set aside as to both, it may be so considered: *McArthur v. Oliver*, 53 M. 299, 305.

115. Where a written request is made seasonably for a finding of facts, and judgment is entered without such finding, it is not error to set aside the judgment and enter a new one after the finding is filed: *Hunt v. Patterson*, 88 M. 95.

116. Refusal to open a judgment that an affidavit of non-execution may be supplied is discretionary: *Chicago & N. E. R. Co. v. Genesee Circuit Judge*, 40 M. 168.

117. Setting aside an irregular judgment may be compelled by *mandamus*: *People v. Bacon*, 18 M. 247.

(b) *How far conclusive; collateral attack.*

See EQUITY, XII, (c), 2, 3; JUSTICES OF THE PEACE, V, (b), 2.

As to attacking judgment for want of jurisdiction, see JURISDICTION, §§ 6-15, 108-116.

As to conclusiveness and effect of judgments in ejectment, see EJECTMENT, §§ 198-206.

118. A judgment of a court of another state must be given the same credit here that it has by law or usage in the state where it was rendered; but it is not to be given more than its domestic force: *Bonesteel v. Todd*, 9 M. 371.

119. A foreign judgment may have great force or even be conclusive as evidence, but it cannot be enforced as a judgment outside of the jurisdiction in which it is given without being established in new legal proceedings: *Dickinson v. Seaver*, 44 M. 624.

120. A judgment in a proceeding for a forfeiture under the United States revenue laws, *pro forma in rem*, but practically against the claimant of the property, is not conclusive evidence against parties who have no notice of the proceedings, as to facts on which the judgment was founded: *Dean v. Chapin*, 22 M. 275.

121. The judgment of a court of competent jurisdiction is, as a plea, a bar, and as evidence conclusive between the same parties and their privies: *Wales v. Lyon*, 2 M. 276; *Prentiss v. Holbrook*, 2 M. 372.

122. Legal proceedings bind only parties and their privies; and though proceedings *in rem* bind every one, they must have been commenced by some authorized person: *Besançon v. Brownson*, 39 M. 888.

123. A judgment for plaintiff in an action for breach of warranty in a sale of chattels affirms the validity of the contract: *Barker v. Cleveland*, 19 M. 280.

124. A judgment between strangers cannot be allowed to prove anything more, whether presumptively or absolutely, than what was alleged and determined as between them: *Hines v. Jenkins*, 64 M. 469 (Jan. 20, '87).

125. In a proper case it seems that a judgment against a corporation, if obtained without fraud or collusion, is conclusive and binding upon one of its stockholders as to the nature and extent of the company's liability; but the questions whether the cause of action adjudicated was of a nature to render the stockholders liable under the statute, and whether the conditions as to ownership of stock, and the fact of such ownership at the time specified, existed, should be considered open: *Bohn v. Brown*, 38 M. 257.

126. Where a probate order adjudges a man incompetent to take care of his property and appoints a guardian, a recital in such order that the man is insane is not evidence that he lacks testamentary capacity: *Rice v. Rice*, 50 M. 448, 53 M. 432.

127. A judgment in trespass or in trespass on the case does not determine the title to land: *Keyser v. Sutherland*, 59 M. 455; *Busch v. Nester*, 62 M. 381; *Fahey v. Crotty*, 63 M. 383.

128. Dismissal of a writ of error leaves the judgment upon which it was sued out operative and conclusive: *Hitchcock v. Pratt*, 51 M. 263.

130. A judgment cannot be attacked by strangers to the record: *Baugh v. Baugh*, 37 M. 59.

131. A decree against an executor on his accounting, where nothing appears to put in question the jurisdiction of the probate court, cannot be attacked collaterally on the merits in a suit on the executor's bond: *Holden v. Lathrop*, 65 M. 653 (April 28, '87).

132. Where a court has jurisdiction its proceedings cannot be impeached collaterally: *Clark v. Holmes*, 1 D. 390.

133. Where the record of a case is questioned collaterally only such objections can be noticed as affect the jurisdiction to dispose of it: *Pettiford v. Zoellner*, 45 M. 358.

134. Mere irregularities or errors will not justify the rejection of a collateral judgment offered in evidence; to warrant such rejection its defects must make the judgment jurisdictionally invalid: *Bigelow v. Barre*, 80 M. 1.

135. Sureties are concluded by a judgment against their principal obtained in the customary manner and in the course of regular proceedings, but not by a secret confession of judgment fraudulently and collusively made between him and the obligee: *Wright v. Hake*, 38 M. 525.

136. A receiptor to the sheriff for property levied on under an execution is estopped from denying the validity of the execution: *Burk v. Webb*, 32 M. 173.

137. The regularity of a judgment cannot be inquired into on judgment creditor's bill: *Williams v. Hubbard*, 1 M. 446.

138. Where a judgment after due service against a married woman is not impeached on error or appeal, its conclusiveness cannot be questioned on account of the invalidity of the cause of action: *Wilson v. Coolidge*, 42 M. 112.

139. Where a judgment is regularly rendered and not appealed from, it cannot be attacked collaterally on the ground that the suit

should have been brought in the name of a different official plaintiff: *Somers v. Losey*, 48 M. 294.

140. A sheriff sought to evade a writ of replevin by leaving the goods in the receptor's hands while the writ was served on himself, and afterwards selling them. As he was then prevented from delivering them, however, he afterwards, and without further process, again seized the goods, delivered them, and was again sued in replevin. In the first suit he suffered judgment for acting on void process. In the second the same issue was tried and he recovered. *Held*, that in the second suit the validity of the process was *res adjudicata*; that the first judgment could not be collaterally assailed by retrying that issue until the errors of the first trial, if there were any, had been corrected by an appellate court; and that in making the second seizure the sheriff was a trespasser and could confer no right under it: *Mayhue v. Snell*, 37 M. 305.

141. Defendants in an attachment proceeding in the federal court assigned a debt due them, and the debtor was afterward garnished and the assignee notified to appear in the federal court and maintain the rights conferred by the assignment. The assignee did not appear, and judgment was rendered against the garnishee upon the statutory issue provided for by H. S. § 8085. The assignee meanwhile sued the garnishee in the state courts and recovered judgment. *Held*, on error, that the assignee was bound by the proceedings in the federal court, which had possession of the principal controversy and could take cognizance of collateral issues: *Rothschild v. Burton*, 57 M. 540.

142. Where a claim against an estate is allowed, upon an appeal from commissioners, by a court which has jurisdiction, and no fraud is proved against the adjudication, the allowance is conclusive as against any collateral attempt to impeach it: *O'Connor v. Boylan*, 49 M. 209.

143. An adjudication by a bankruptcy court in a certain case, that an attachment was a valid lien on such property as was actually levied upon more than four months before the bankruptcy proceedings were begun, does not fix the identity of the property attached, and in itself is therefore incompetent as evidence to determine the validity of specific attachments: *Rowley v. Grover*, 37 M. 588.

That a discharge in bankruptcy is conclusive as to non-liability, and cannot be attacked collaterally, see *BANKRUPTCY*, §§ 18-22.

(c) *Conclusiveness as to claims or defences that might have been pleaded.*

See *EQUITY*, §§ 1367-1371, 1375.

144. A defence cannot be withheld to be used in the retrial of a dispute respecting the same subject-matter when a single suit could end the whole controversy: *Jacobson v. Miller*, 41 M. 90.

145. A defendant can withhold his claim of set-off to be litigated in another suit: *McEwen v. Bigelow*, 40 M. 215.

146. Objections to the validity of proceedings involved in a suit cannot be raised in a later case if purposely withheld or reserved in the first one: *Clark v. Wiles*, 54 M. 323.

147. One who is sued in respect to one subject-matter is not precluded in any after litigation involving the same questions, though relating to a different subject-matter, from introducing defences not used in the former suit: *Jacobson v. Miller*, 41 M. 90.

148. The subject-matter of a litigation is the right which one party claims as against the other, and on which he demands the judgment of the court: *Ibid*.

149. Where the execution of a paper is admitted by failure to deny it on oath, it is expressly left outside the issue, and, not being part of the subject-matter of the suit, can be put in issue in other litigation on the same paper: *Ibid*.

150. A claim which was a proper matter of defence in an action at law cannot afterwards be made the subject of an equitable set-off: *Kinney v. Tabor*, 62 M. 517.

151. B. had a contract with M., but sued him on the common counts before a justice to recover back an overpayment. He did not put the contract in issue, though he gave M. credits under it. M. filed no set-off, but immediately sued B. before another justice for the whole amount of his bill. *Held*, that the judgment in the first suit did not bar the second: *McEwen v. Bigelow*, 40 M. 215.

152. If a counter-claim is not based on payments made, but constitutes proper set-off, the only effect of failing to appear and plead and prove it would be that, in any subsequent action to recover it, costs could not also be recovered: *Huntoon v. Russell*, 41 M. 316.

153. A defendant who, when sued upon a contract, does not recoup his damages for plaintiff's negligent performance, but sues separately for such damages and gets judgment, cannot plead such judgment in bar of

the action against him; nor is the plaintiff in the former action estopped from prosecuting it by the judgment in the latter: *Mimnaugh v. Partlin*, 67 M. 391 (Oct. 27, '87).

154. Where one has a demand which is capable of being used by way of recoupment, it is at his option whether he will so use it, or, or instead thereof, bring a separate action upon it: *Ward v. Fellers*, 3 M. 281; *Morehouse v. Baker*, 48 M. 335; *Mimnaugh v. Partlin*, 67 M. 391 (Oct. 27, '87).

155. One who fails in equity to have a judgment set aside for fraud may contest at law a void execution sale thereon, and is not debarred from doing so by not having put it in issue in his chancery suit: *Bonker v. Charlesworth*, 33 M. 81.

156. In a lawsuit involving the title to land, the plaintiff is not estopped from contesting the regularity of a statutory foreclosure under which the title has been obtained, by having omitted to raise that question in a former suit brought by him in chancery to set aside the mortgage as invalid: *Ibid*.

157. A tenant who had been evicted by another tenant claiming under a prior lease brought suit upon his landlord's alleged agreement to indemnify him for the costs and expenses of appealing from the eviction proceedings; judgment went for defendant. *Held*, that this barred a later action for outlays alleged to have been made under the same agreement but subsequent to the former suit: *Cummerford v. Paulus*, 66 M. 648 (July 7, '87).

158. Where a party has recovered on a contract the purchase price of staves that were to be delivered by him thereunder to defendant, his failure, by reason of the absence or drunkenness of a witness, to prove the delivery of a certain lot, and the withdrawal of that item in his claim, will not authorize him to bring another suit for it; this item was not a distinct cause of action, and the former judgment was a final determination of the damages he was entitled to recover under the contract: *Dutton v. Shaw*, 35 M. 431.

(d) *Former adjudication; estoppel.*

1. In general.

See EQUITY, XII, (c), 2, 3.

159. A decision once made in a case must continue to govern it, notwithstanding the point then decided is not held to be law in other cases: *Newberry v. Trowbridge*, 13 M. 263.

160. The rule of law as laid down by the supreme court in the decision of a cause is to be applied upon the same state of facts in all the subsequent proceedings in the cause: *Mynning v. Detroit, L. & N. R. Co.*, 67 M. 677 (Jan. 5, '88).

161. A decision made at the first hearing of a case in a court of review is not conclusive on the same point at a second hearing, if the latter record contains evidence of additional facts relating thereto: *White v. Campbell*, 25 M. 463.

162. Plaintiff below brought error to reverse the judgment below for a charge adverse to him. There was a variance between the declaration and the proof which would have precluded his recovering, but this was not suggested in the supreme court as an objection to reversal. A new trial being ordered, the same variance appeared, but plaintiff recovered. *Held*, that defendants bringing error could not for the first time insist that there was a variance, as that point had been constructively ruled against them, upon their tacit waiver, by the reversal: *Great Western R. Co. v. Hawkins*, 18 M. 427. See *Lake Shore & M. S. R. Co. v. Perkins*, 25 M. 329, 338.

163. An affirmance of judgment by an equal division of the supreme court is as conclusive as any other judgment: *Lyon v. Ingham Circuit Judge*, 37 M. 877.

164. A decision by a majority of the supreme court is as conclusive as if it were unanimous: *McCutcheon v. Homer*, 43 M. 483; *Feige v. M. C. R. Co.*, 62 M. 1.

165. And a change in the composition of the court will not warrant a reopening of the controversy unless the court itself orders a reargument: *McCutcheon v. Homer*, 43 M. 483.

166. An adjudication is conclusive in respect to (1) the subject-matter of the litigation, and (2) the point of fact or law, or both, necessarily settled in determining the issue on the subject-matter: *Jacobson v. Miller*, 41 M. 90.

167. Parties to a controversy cannot, after judgment, revive it in another court and cause, in order to raise again the questions already in issue and adjudicated: *Hudson v. Superior Court Judge*, 42 M. 239.

168. Adjudications upon the subject-matter of a suit are conclusive wherever any question respecting it arises afterwards in a collateral suit, and in any new suit in which the pleadings put any part of it in issue; and this is so whether the adjudication was obtained on default, or whether all possible questions were raised on the trial, or whether it was correct in fact or law: *Jacobson v. Miller*, 41 M. 90.

169. A judgment rendered upon confession has the same effect as one rendered upon a trial: *Town v. Smith*, 14 M. 848.

170. Estoppel by a previous judgment does not depend on its justice, but on the fact that the merits have been passed upon: *Fifield v. Edwards*, 39 M. 264.

171. An order's superfluous recital concerning a matter not necessarily involved in the main issue is not conclusive as an adjudication: *Rice v. Rice*, 58 M. 432.

172. To make a judgment in one case a bar to another action it is not essential that the object of the two suits should be the same; nor that the parties should stand in the same relative position to each other; nor that the point in controversy should have been actually litigated in the first suit; it is sufficient if its determination was necessarily involved in the judgment: *Barker v. Cleveland*, 19 M. 230.

173. To render a former judgment a bar to a subsequent action it must have been rendered upon the merits, upon the same subject-matter, and between the same parties: *Tucker v. Rohrback*, 13 M. 78; *Love v. Francis*, 63 M. 181.

174. To bar a set-off introduced in a suit between A. and B., the plaintiff put in evidence a former suit brought by B. and his wife against A., in which a recovery was sought upon the same claim now sought to be set off. It was shown that judgment was rendered in that case, but it did not appear whether it was upon the merits or not. Held no bar: *Tucker v. Rohrback*, 13 M. 78.

175. Estoppel from asserting a claim excluded from a former suit cannot apply where it was not within the issue in that suit, and there was therefore no opportunity to establish it: *Fifield v. Edwards*, 39 M. 264.

176. A party is not estopped by a former litigation from vindicating, in another suit, rights that were not involved and that could not properly be litigated in the former one: *Nichols v. Marsh*, 61 M. 509.

177. Where the execution and delivery of a lease are disputed in a suit for rent, the determination of the issue concludes the parties in any subsequent litigation involving the right to rent under the same lease: *Jacobson v. Miller*, 41 M. 90.

178. A judgment upon a subscription to the capital stock of a corporation, so long as it remains in force, would be a conclusive adjudication upon any defence to the validity of the subscription: *Gould v. Vaughan*, 30 M. 376.

179. Judgment in an action for slander is a bar to any future action for any repetition

thereof open to proof on the trial: *Leonard v. Pope*, 27 M. 145.

180. Where seduction has been proved in aggravation of damages in a breach of promise case the recovery will bar any future action for the seduction: *Sheahan v. Parry*, 27 M. 217.

181. A judgment of nonsuit is not a final disposition of the subject-matter in litigation, and ordinarily is not a bar to a subsequent suit for the same cause of action: *Bowne v. Johnson*, 1 D. 185.

182. Judgment which is ineffectual by reason of a mistake in the name of one of the plaintiffs will not prevent them from bringing a new suit upon it: *Wixom v. Stephens*, 17 M. 518.

183. A judgment rendered in a court that by statute could have no jurisdiction over defendant's person is no bar to a suit in a competent court: *Basom v. Taylor*, 39 M. 689.

184. A judgment in a proceeding begun before any cause of action has accrued can have no bearing on another proceeding begun by the same party; there can be no presumption of identity, and there is no occasion to inquire whether the judgment is pleadable in bar or in abatement: *Hart v. Lindley*, 50 M. 20.

185. The plea of former judgment cannot be sustained if it does not appear that plaintiff in the former suit had a right to bring his suit at the time he brought it, and that it was decided on its merits. And the contrary may be shown in meeting such a plea: *Wood v. Faut*, 55 M. 185.

186. Judgment for defendant for costs, on the ground that the claim sued was not yet due, is no bar to a new suit: *Franks v. Fechheimer*, 44 M. 177.

187. A judgment for plaintiff in an action for breach of warranty in a sale of chattels concludes nothing concerning payment on such contract, and does not bar an action for the purchase price: *Barker v. Cleveland*, 19 M. 230.

188. The fact that a judgment has been recovered on a note secured by mortgage is no answer to a suit by the mortgagors to have the mortgage set aside on showing that the note has actually been paid: *Rickle v. Dow*, 39 M. 91.

189. The result of a suit for the taxes of particular years is not *res judicata* in subsequent suits between the same parties for taxes of other years, and the decisions upon legal questions arising in the first case are important only as precedents: *Lake Shore & M. S. R. Co. v. People*, 46 M. 193.

190. An adjudication that a claim filed

under a general assignment could not be based on a contract of purchase of goods which the claimant vendors had rescinded for fraud does not bar a claim for the conversion of the goods: *Farwell v. Myers*, 64 M. 234.

191. A disallowance of a claim presented to commissioners on an estate is not a bar to a subsequent suit where the claim was not adjudicated upon the merits and where there was no opportunity for such adjudication: *McKinney v. Curtiss*, 60 M. 611.

192. A judgment for defendant on a general demurrer to the declaration is not a bar to a new action where a different state of facts is declared upon: *Rodman v. M. C. R. Co.*, 59 M. 895.

193. A judgment for defendants in a joint action does not bar another proceeding against a portion of them on the same cause of action: *Detroit v. Houghton*, 42 M. 459.

194. If one sues in *assumpsit* for the value of chattels, where by strict rules only an action of tort would lie, and obtains judgment, the judgment will determine the matters in issue as conclusively as though the proper action had been brought: *Jennings v. Sheldon*, 44 M. 92.

195. A judgment for defendant in replevin, for exempt property taken by him on execution, bars trover against him for its conversion, unless after the return of the property and before its sale the claim of exemption is plainly made: *McGuire v. Galligan*, 57 M. 89.

196. A judgment in replevin of recovery and for damages for detention cannot, it seems, bar an action for unlawful trespass and personal wrongs distinct from the detention of the property; and certainly, to be used for any such purpose, it must be pleaded in bar: *Briggs v. Milburn*, 40 M. 512.

197. The validity of a will under which plaintiff in ejectment claims, and which was admitted to probate though contested by defendant, cannot be questioned by the latter in such action of ejectment: *Johnson v. Johnson*, 70 M. 65 (April 27, '88).

198. Judgment recovered in Michigan by a foreign executor suing in his own name on a note belonging to the estate and payable to bearer bars any subsequent proceeding against defendant: *Knapp v. Lee*, 42 M. 41.

199. A mortgagee of chattels brought replevin against an attaching creditor, and sought to show that the demand in one of the attachment cases, which had passed into judgment, had been paid before judgment. Held that, if there was no showing of collusion between the attachment creditor and the debtor, this would be an attempt to retry the ques-

tion involved in the attachment suit: *Wallen v. Rossman*, 45 M. 833.

200. A judgment in replevin against an officer holding goods under an attachment does not estop the same or prevent any other officer from levying execution on the same goods in a different suit brought by another creditor of the party against whom the attachment was issued, where such creditor had no interest in the replevin suit nor the right to intervene therein. Nor would it be conclusive of the title as against a purchaser at the execution sale: *McKay v. Kilburn*, 42 M. 614.

201. The denial of a motion for a new trial, unless proceedings by *mandamus* are taken to review the decision as an abuse of discretion, is *res adjudicata* upon the ground urged in support of the motion: *Gray v. Barton*, 62 M. 186.

As to effect of denial or award of MANDAMUS, see that title, §§ 301-304.

That dismissal of writ of error does not bar new writ, see ERROR, §§ 222, 223.

202. Where the same transaction is involved in two cases the mere verdict of the jury in one of them cannot be shown in the other for the purpose of fixing the quality of the transaction. But the record in the former may operate as a bar in the latter: *Wheeler v. Wallace*, 58 M. 364.

203. If, when sued on his bond, a surety in *certiorari* shows as a defence a former judgment against himself, it is proper to rebut this by testimony that it was vacated because he had notified the plaintiff's attorney that no judgment could be given against him without a direct suit on the bond: *Porter v. Leache*, 56 M. 40.

204. Where the subject-matter of a suit has confessedly been in litigation before, the evidence that the merits were not passed on ought to exclude all other hypotheses: *Baxter v. Aubrey*, 41 M. 14.

205. In order to be a bar both the issue and judgment must be taken and rendered upon the merits; and briefs of counsel are inadmissible to show the basis of the judgment: *Greenlee v. Lowing*, 35 M. 63.

As to parol evidence to show basis of former judgment, see EVIDENCE, §§ 1251-1254.

2. Who are bound.

See EQUITY, XII, (c), 1.

206. A matter once fully adjudicated is conclusively adjudicated as between parties and privies: *Hazen v. Reed*, 30 M. 831.

207. Where one party to a contract claims that it has been rescinded and recovers judg-

ment against the other party upon the *quantum meruit*, he is estopped, in a later litigation with the same party, from claiming the right to carry out the contract; and the record in the former action is admissible to establish the estoppel: *Martin v. Boyce*, 49 M. 122.

208. A party to a judgment is precluded by it from going behind it to dispute the grounds on which it was rendered: *Pierson v. Reynolds*, 49 M. 224.

209. A judgment not only fixes the extent of liability, but the party or parties liable, and if such party is a corporation it is not merely individual members thereof that are held: *Brewer v. Michigan Salt Association*, 58 M. 351.

210. The reason why judgments of courts having jurisdiction are conclusive on parties and privies is because such parties have had an opportunity to assert or defend their rights in the court giving judgment: *Axford v. Graham*, 57 M. 423.

211. As a general rule judgments bind only parties and their privies, and no one is bound by a proceeding to which he is not a party: *Hale v. Chandler*, 8 M. 531; *Hodson v. Van Fossen*, 26 M. 68; *Huntoon v. Russell*, 41 M. 316; *Bachelder v. Brown*, 47 M. 366.

212. And to be a party in this sense one must be directly interested in the subject-matter, and have the right to make defence or control the proceedings, and appeal from the judgment: *Hale v. Chandler*, 8 M. 531.

213. One who sells chattels with warranty of title, and who, when his vendee is sued for their value by the real owner, takes upon himself the defence of the suit is bound by the result, whatever may have been the form of action: *Jennings v. Sheldon*, 44 M. 92.

214. Where the claimant of personalty sold by another assumes the defence of an action for the purchase price, brought by the vendor against the vendee, on the understanding that if the defence prevails the vendee will pay the claimant instead of the vendor, the judgment concludes the claimant's rights as between vendor and vendee: *Estelle v. Peacock*, 48 M. 469.

215. Where a third party in a suit upon negotiable paper claims such paper and takes upon himself the defence of the suit on that ground, the judgment binds him: *Bachelder v. Brown*, 47 M. 366.

216. A judgment for the amount of a lien does not prove breach of warranty unless rendered in a proceeding which the warrantors undertook to be concerned in or had proper notice to defend: *De Witt v. Prescott*, 51 M. 298.

217. A vendor of personalty notified by his vendee to defend title will be bound by the judgment but cannot hold his own vendor bound by it unless he has given the latter notice to defend; and this is so though the latter was a witness in the case: *Axford v. Graham*, 57 M. 423.

When covenantor is bound by judgment in ejectment against grantee, see EJECTMENT, §§ 202-205.

218. A judgment recovered by one who had assigned his claim to a third party after suit begun would be a bar to any future proceedings which the assignee might commence for the same cause of action: *Peters v. Gallagher*, 37 M. 407.

219. Plaintiffs in garnishment are bound by the judgment in a subsequent suit brought against the garnishee by his creditor's assignee which they have been notified to defend: *Butler v. Wendell*, 57 M. 62.

220. A constable seized a horse under a chattel mortgage, but the mortgagor recovered it in replevin and then sold it. The mortgagee then brought trover against the purchaser. *Held*, that he was not concluded by the judgment against the constable, even though the latter was his agent, and he had acted as attorney for him in the replevin suit: *Warner v. Comstock*, 55 M. 615.

221. Ejectment was brought against the executors of an estate, and they prevailed. The executor of one of the heirs, to whom the rest had conveyed their interests, afterwards brought ejectment for the same land against a grantee of the plaintiff in the first action. *Held*, that the former judgment operated as an estoppel against such grantee. And if all the heirs united in defending the first suit the estoppel would not be affected by a question whether, as between one of the heirs and the ancestor, the title was in one or the other: *Whitford v. Crooks*, 54 M. 261.

222. A proceeding to obtain widow's allowances is not binding upon a woman who had in good faith married decedent after the claimant had left him, and was living with him as his wife at the time of his death, but was not made a party to the proceeding brought by her predecessor: *Young's Appeal*, 52 M. 592.

223. While a probate decree allowing a claim on an insane decedent's bond might conclude the estate from questioning the bond, it cannot estop the widow from resisting a proceeding in aid of an execution thereon by a bill to set aside, for the grantor's insanity, a prior deed made to her by her husband:

Davis Sewing Machine Co. v. Barnard, 48 M. 879.

224. No one legatee is estopped by a finding that has been set aside on the appeal of only one in a proceeding to determine the rights of all of them upon the distribution under the will: *McClintock's Appeal*, 58 M. 152.

225. The estate of a deceased judgment debtor has no better defence to an action on the judgment, or proceedings to collect it, than he would have had if living: *Arnold v. Thompson*, 19 M. 333.

226. A finding and report by commissioners on claims of an amount due the estate cannot be regarded as *res adjudicata* against one who has had no notice of their proposed action, and who never appeared in any way before the commissioners: *Kimball v. Cannon*, 59 M. 290.

227. A foreclosure for non-payment of interest only of a mortgage given to secure a note payable four years after the mortgagee's death to his heirs, interest payable to the mortgagee during his life-time only, *held* not to be *res adjudicata* as against the heirs in a contest between them and the mortgagee's administrator for the proceeds of the note: *Love v. Francis*, 63 M. 181.

228. Plaintiff brought an action against a sheriff for taking certain personal property, which, on final hearing, was determined against the plaintiff. After the sheriff had sold the property, plaintiff brought his action to recover the same against the purchaser at the sheriff's sale, but it was held that judgment in the suit against the sheriff was a bar to the action against the purchaser: *Prentiss v. Holbrook*, 2 M. 372.

229. A new township is not bound by a judgment upon bonds issued by the old township of which it formed a part, where such judgment was rendered in an action brought after the division and without making the new township a party: *Hale v. Baldwin*, 49 M. 270.

230. J.'s agent moved a division fence that stood between J.'s premises and P.'s. P. moved it back again in the night. J. tried to tear it down, and as P.'s wife resisted he assaulted her. In an action therefor by Mrs. P. she could not show, as *res adjudicata*, that in a former suit between the agent and a third person concerning other premises, but in which the principal matter in issue was the true location of a section line that P. claimed as the boundary to the premises in suit, the result was adverse to the agent: *Phillips v. Jamieson*, 51 M. 153.

(e) *Merger; control.*

231. A demand is merged in the judgment obtained thereon, and it no longer subsists for any purpose: *Huntoon v. Russell*, 41 M. 316.

232. A debt is not merged in a judgment until a valid judgment has been obtained upon it: *Wixom v. Stephens*, 17 M. 518.

233. Where by mistake a judgment entered on confession on a note is for less than the amount due, the note is nevertheless merged in the judgment, and the plaintiff cannot maintain a suit for the balance: *Town v. Smith*, 14 M. 348.

234. And if the judgment could be treated as one for the whole amount confessed to be due, yet if plaintiff has taken execution and collected the lesser amount he must be regarded as having elected to treat it as a judgment for the lesser amount, and is as much bound by that election as if he had originally consented to have judgment taken for such amount: *Ibid.*

235. A note is not so merged in a judgment in attachment as to bar a personal action on it, or its assignment to a third person, if there has been no appearance in the attachment suit, and no part of the judgment satisfied: *Smith v. Curtiss*, 38 M. 393.

236. At common law a judgment against one joint debtor operates as a merger, and puts an end to any action on the original contract against either: *Candee v. Clark*, 2 M. 255; *Bonesteel v. Todd*, 9 M. 371.

237. A judgment rendered under the joint debtor act, in form against two joint debtors, one only of whom was served with process, is not an extinguishment of the demand sued upon: *Bonesteel v. Todd*, 9 M. 371; *Mason v. Eldred*, 6 Wall. (U. S.) 231.

238. Where suit was brought in the state of New York against two joint debtors, one of whom was not served with process, and did not appear in the action, and judgment in form was rendered against both under the joint debtor act, it was *held* that this judgment was not an extinguishment of the demand sued upon, and that an action brought subsequently in this state against the two was properly brought on the original demand instead of upon the judgment: *Bonesteel v. Todd*, 9 M. 371.

239. An order vacating a judgment as to one of two defendants cannot, in a subsequent suit against them both for the same cause of action, be treated as merging the whole claim in a judgment against the other defendant, if court, counsel and parties have meanwhile

dealt with the judgment as wholly set aside: *McArthur v. Oliver*, 53 M. 299.

240. Judgments are under the control of the parties recovering them, or of their attorneys, and they may restrain the sheriff from proceeding to collect them: *Peck v. City National Bank*, 51 M. 354.

III. ASSIGNMENT.

241. An assignee of a judgment takes subject to such matters of set-off as existed in favor of the judgment debtor against the assignor up to the time when the debtor received notice of the assignment: *Finn v. Corbitt*, 36 M. 318.

242. If a defendant allows judgment to be taken for the full amount of a claim against him without setting up payments he has made thereon, he cannot set up such payments in an action afterwards brought by an assignee of the judgment, nor can he set off against such judgment a subsequent judgment obtained by him in a suit to recover back such payments from the assignor: *Huntoon v. Russell*, 41 M. 316.

IV. SATISFACTION; DISCHARGE; STAY.

See JUSTICES OF THE PEACE, V, (c).

243. The levy of an execution upon sufficient personal property to pay the demand is *prima facie* a satisfaction of the judgment: *Spafford v. Beach*, 2 D. 150. See *Henry v. Gregory*, 29 M. 68.

244. But it is not conclusive evidence: *Farmers', etc. Bank v. Kingsley*, 2 D. 379.

245. Nor can one claim that a judgment is satisfied by a levy which he has himself unlawfully defeated: *Nelson v. Ferris*, 30 M. 497.

246. A levy on real estate is not a *prima facie* satisfaction of the judgment: *Spafford v. Beach*, 2 D. 150; *Thurber v. Jewett*, 3 M. 295.

247. Where separate judgments are obtained against two or more joint trespassers, the suing out of execution on one of them is an election by the plaintiff to enforce that judgment; and no action will afterwards lie on the others: *Boardman v. Acer*, 13 M. 77.

248. Defendant's attorney paid a judgment, agreeing with plaintiff's attorney that if defendant did not reimburse him plaintiff should pay it back to him, he to return the satisfaction of the judgment; but he took no assignment of the judgment to protect himself. Plaintiff supposed the judgment had been satisfied. *Held*, that the payment must, as far as plaintiff was concerned, be

considered as one by defendant, and sufficient to cancel the judgment: *Rogers v. Welte*, 61 M. 258.

249. A. and B. being sued as makers of a note, A. employed an attorney and conducted the defence without help from B., taking a successful appeal and obtaining judgment for costs. B., who was insolvent, collusively receipted to plaintiff for the costs in the name of both defendants. *Held*, that the satisfaction should be set aside and a retaxation ordered in A.'s favor, and to protect the interests of A.'s attorney, to whom A. had turned over the bill of costs: *Potter v. Hunt*, 68 M. 243 (Jan. 19, '88).

250. A tender for the purpose of cancelling a judgment should include damages as well as costs, and a tender of the damages with the clerk's receipts for the costs is not sufficient: *Thurber v. Jewett*, 3 M. 295.

251. Voluntary payment of a judgment waives all objections to it, and there can be no relief: *Hoag v. Breman*, 3 M. 160.

252. On a showing of payment in full to plaintiff's attorney of a judgment, and of his authority to receive the same, a perpetual stay of proceedings is justifiable: *Whitney v. McConnell*, 30 M. 421.

253. Where the supreme court gave judgment of affirmance for the plaintiffs in an action upon a replevin bond, a motion in that court to stay proceedings on such judgment for the reason that the judgment for the return of the property in the replevin suit had been set aside in the circuit court upon a motion made on *ex parte* affidavits some five or six years after its rendition, was denied: *Jennison v. Haire*, 29 M. 207.

When stay compelled by MANDAMUS, see that title, §§ 92-94.

Payment of judgment required in decree dismissing bill to enjoin execution, see EQUITY, § 1277.

Agreement to compromise judgment, see ESTOPPEL, § 149.

As to stay of execution, see EXECUTIONS, §§ 28-35; BANKRUPTCY, §§ 24, 25.

V. SET-OFF.

254. Whether, since the adoption of H. S. § 7710, governing the set-off of executions, there is any propriety in resorting to equity for the set-off of judgments, in the absence of special reasons, *quere*; at any rate, equity can give the moving party no greater advantages than the statute does: *Wells v. Elsam*, 40 M. 218.

255. Nor can a judgment assigned by a

client to his attorney, in payment for the latter's services, be subjected to the set-off of a judgment recovered against the client, so far as it does not exceed the attorney's proper claims: *Ibid.*; *Kinney v. Tabor*, 62 M. 517.

256. A judgment recovered before one justice can be ascertained and applied by another in satisfaction of a counter-claim recovered before him by the other party: *McEwen v. Bigelow*, 40 M. 215.

257. Where a judgment allowed to be taken for the full amount of a claim without deduction for payments has been assigned, a judgment subsequently obtained against the assignor in a suit to recover such payments cannot be set off against it in an action thereon by the assignee: *Huntoon v. Russell*, 41 M. 310.

258. A bill to compel the offset of judgments was dismissed, where one was a joint and the other a sole judgment, and that recovered by defendant had been lawfully assigned to a third person for a valuable consideration before there was any final judgment against which it could be set off: *Ledyard v. Phillips*, 58 M. 204.

259. Where, under H. S. § 7709, the sheriff has allowed a set-off of an execution against a larger one in his hands, and has received in money the balance of the latter, with the consent of both parties, and has returned the latter satisfied, a motion to set aside such return on the ground that the larger judgment had been previously assigned, and that consent to the set-off was given by mistake, should not be granted: *Lyon v. Smith*, 66 M. 676 (July 7, '87).

Discretionary refusal to compel set-off not reviewed, see *MANDAMUS*, § 95.

VI. ACTION UPON JUDGMENT; SCIRE FACIAS.

See *JUSTICES OF THE PEACE*, V, (d).

260. In an action in one state upon a judgment of a court of general jurisdiction of another state, no plea or proof can be received in contradiction of any material fact appearing by the record, unless such plea or proof would be received in an action on the judgment in the state in which it was rendered: *Wilcox v. Kassick*, 2 M. 165.

261. Though by statute *assumpsit* may be brought, a judgment must be declared on specially and with accuracy. The count on an account stated will not lie thereon: *Gooding v. Hingston*, 20 M. 439.

262. A judgment rendered in favor of A. by mistake for B. cannot be sued on by B.

even if the mistake be proved: *Gilbert v. Hanford*, 13 M. 40.

263. Henry V. Libhart is not entitled to recover in an action upon a judgment in favor of H. V. Libhart, without any allegation or proof of his identity with the party in whose favor the judgment was rendered: *Bennett v. Libhart*, 27 M. 489.

264. The fact that the judgment was received in evidence by consent does not preclude the defendant from disputing the right to recover on it; proof of the judgment was only one of the steps necessary to make out a case: *Ibid.*

265. In an action to recover the balance due upon a foreign judgment, the declaration averred the recovery of judgment for a certain sum "and also the sum of \$42.60 adjudged to said plaintiff," etc. The judgment record introduced in evidence showed a judgment for the sum named, "besides his costs and charges herein expended," and elsewhere showed that they had been fixed at the sum stated in the declaration. *Held*, that there was no fatal variance, and, though it was not shown how the costs were taxed, the proceedings fixing their amount could not be presumed illegal: *Hunt v. Middlesworth*, 44 M. 448.

266. In a suit against a single defendant upon a judgment rendered in a foreign state against three defendants, and where the exemplification of the foreign judgment did not show any return of service upon the other two defendants, and contained recitals that they were proceeded against by publication, while the entry of judgment recited due service of summons upon all, and the judgment appeared to have been collected in part by seizure and sale of the property of one of the other defendants, and the plaintiff declared upon the judgments as one valid against all the defendants, giving no reason for proceeding against one alone, it was *held* that the judgment was not void on its face as against any of the defendants therein named, and that the plaintiff's declaration contained no allegations to warrant his going into evidence to show that the judgment bound the defendant alone. The foreign judgment, therefore, did not support a judgment against the single defendant: *Dart v. Goss*, 24 M. 266.

267. Writs of *scire facias* cannot issue to other counties than that in which the court sits: *Burt v. Jackson Circuit Judge*, 35 M. 228.

268. An insurance agent gave bond to his principals, conditioned to account for and pay over the moneys received by him as such.

Judgment having been recovered by them on this bond for money not accounted for and paid over, a *scire facias* was issued, assigning as a breach that the obligor had, before the judgment, received a further sum for which he failed to account, and the receipt of which he fraudulently concealed. On demurrer it was held that the fraudulent concealment was a sufficient reason for not including this sum in the original pleadings and judgment, and the demurrer was overruled: *Johnson v. Provincial Ins. Co.*, 12 M. 216.

VII. JUDGMENT CREDITORS' PROCEEDING.

As to EXECUTIONS, see that title.

As to proceedings in equity, see EQUITY, II, (1).

269. The defects of the statute (H. S. §§ 8107-8121) providing a remedy at law in lieu of suits in equity by judgment creditors' bill pointed out, and resort to the statute deprecated: *Reed v. Baker*, 42 M. 272.

270. It seems to have been the intention of the legislature, when restoring (by act 120 of 1855) the remedy in equity, to abolish the whole statute as to proceedings at law, but apparently only the section forbidding creditors' bills was repealed: *Ibid*.

271. In such proceedings, an order holding that property in the hands of a person not made a party, and who has had no opportunity to be heard except as a witness, belongs to the judgment debtor, and is liable to execution against him, is void. Under H. S. §§ 8111, 8112, the appointment of a receiver who may sue directly the person supposed to be covering goods for such debtor is provided for: *Ehlers v. Stoeckle*, 37 M. 261.

As to appeals, see APPEAL, § 101.

JURISDICTION.

I. IN GENERAL.

II. ESSENTIAL TO VALIDITY OF JUDGMENT.

III. HOW ACQUIRED.

- (a) *In general; notice.*
- (b) *Effect of appearance and plea.*
- (c) *Consent.*

IV. HOW SHOWN; PRESUMPTIONS.

- (a) *Courts of limited and courts of special jurisdiction.*
- (b) *Presumption in favor of court's action.*

V. ERRORS AND IRREGULARITIES; WANT OF JURISDICTION.

VI. CONFLICT OF JURISDICTION.

As to jurisdiction of particular courts, see COURTS, I; EQUITY, II; JUSTICES OF THE PEACE, I.

As to jurisdiction of criminal prosecutions, see CRIMES, IV, (c), V, (a).

As to jurisdiction in particular proceedings, see their titles.

I. IN GENERAL.

1. The jurisdiction of the state upon the lakes and their connecting waters extends to the national boundary: *People v. Tyler*, 7 M. 161.

2. The jurisdiction of our courts of actions for torts committed abroad is undoubted, but its exercise can only be claimed as matter of comity; and when it appears that our tribunals are resorted to for the purposes of an adjudication upon mere personal torts committed abroad, between persons who are all resident where the tort was committed, the court may properly decline to proceed: *Great Western R. Co. v. Miller*, 19 M. 805.

3. The decision of a circuit judge that he has jurisdiction to hold a probate court — and his ignoring an objection is equivalent to such decision — cannot be attacked collaterally, and is final unless appealed from: *Landon v. Comet*, 62 M. 80.

4. While the policy of Michigan does not favor the action of judges in cases where they have been counsel, the jurisdiction of the court is not taken away because of the incapacity of the judge to sit in given cases; and every case must remain in the court where it originated until removed by lawful authority: *Shannon v. Smith*, 31 M. 451.

5. A court has no right to prevent suitors before it from insisting on its retention of jurisdiction in cases not properly removed from it: *Mabley v. Superior Court Judge*, 41 M. 31.

II. ESSENTIAL TO VALIDITY OF JUDGMENT.

6. If a court act without authority its judgments will be regarded as nullities; and the jurisdiction of a court exercising authority over a subject-matter may be inquired into in every court where the proceedings of the former are relied upon by a party claiming the benefit of such proceedings: *Greenvault v. Farmers', etc. Bank*, 2 D. 493.

7. It is immaterial how fair on its face may be any judgment, order, decree or license of a court when back of it lies an absolute legal impediment to making it: *Eberstein v. Oswalt*, 47 M. 254.

8. Where the want of jurisdiction appears

on the record of a court of general jurisdiction the record is a nullity: *Greenvault v. Farmers', etc. Bank*, 2 D. 498; *Wilson v. Arnold*, 5 M. 98.

9. So with the judgment of a court of general jurisdiction of another state if the record shows a want of jurisdiction: *Wilcox v. Casick*, 2 M. 165.

10. The general doctrine is that no one can be subjected to a judgment without a suit against himself: *Willard v. Fralick*, 31 M. 431.

11. Parties whose interests are prejudiced may always take advantage of want of jurisdiction in the court where the injury occurred: *Gillett v. Needham*, 37 M. 143; *Breen v. Pangborn*, 51 M. 29; *King v. Merritt*, 67 M. 194 (Oct. 13, '87).

12. The rule that the judgment of a court having jurisdiction of the parties and of the subject-matter is binding until reversed, and cannot be attacked collaterally, applies only to parties and their privies and to such third persons, or strangers to the record, as would be prejudiced in regard to the same pre-existing right, if the judgment were given full credit and effect: *Eureka Iron, etc. Works v. Bresnahan*, 66 M. 489 (June 23, '87).

13. If, in fact, the subject-matter of a suit was not within the jurisdiction of the state from which the court derives its authority, its judgment is a nullity, and may be so treated everywhere: *People v. Dawell*, 25 M. 247.

14. The judicial proceedings to which full faith and credit must be given in every state besides that in which they are taken are those only in which the court was competent to act; and a *prima facie* showing of their regularity does not save them from impeachment by proper evidence: *Reed v. Reed*, 52 M. 117.

15. The record of an inferior court may be contradicted for the purpose of showing a want of jurisdiction of the person or of the subject-matter: *Clark v. Holmes*, 1 D. 890.

III. How ACQUIRED.

(a) *In general; notice.*

See, also, PROCESS.

16. A court cannot give judgment against a party who has not appeared, without some evidence of jurisdiction, such as filing proof of publication or service: *Denison v. Smith*, 33 M. 155.

17. A defendant has a right to know from the record whether he is subject to the jurisdiction; where that depends on a previous service on some one else, it can be shown only by return of service or appearance: *Ibid*.

18. All extraordinary means of getting jurisdiction must be conformed to the legal authority: *Platt v. Stewart*, 10 M. 260; *Merrill v. Montgomery*, 25 M. 73.

19. Where jurisdiction is obtained by substituted in lieu of actual service the statutes must be strictly complied with or the proceedings cannot be sustained: *Merrill v. Montgomery*, 25 M. 73.

20. In special proceedings to acquire jurisdiction over non-residents without actual notice the necessary steps must appear affirmatively upon the record: *Platt v. Stewart*, 10 M. 260.

21. In special proceedings against parties not served or not appearing the substituted service must be strictly regular under the statutes: *King v. Harrington*, 14 M. 532.

22. A failure to comply with statutory requirements where the jurisdiction conferred is special, and no personal service is obtained, renders the judgment void, and the proceedings may be attacked collaterally: *Nugent v. Nugent*, 70 M. 52 (April 27, '89).

23. All exceptional modes of obtaining jurisdiction over persons, natural or artificial, not found within the state, must be confined to the cases and exercised in the manner precisely indicated in the statute: *Hartford Fire Ins. Co. v. Owen*, 30 M. 441; *Hebel v. Amazon Ins. Co.*, 33 M. 400; *Steere v. Vanderberg*, 67 M. 570 (Nov. 10, '87).

24. No jurisdiction of an action against a foreign corporation can be acquired by a service which does not comply with the statutory provisions therefor: *American Express Co. v. Conant*, 45 M. 642.

25. When service is made within a state upon an agent of a foreign corporation, it is essential, in order to support in a federal court the jurisdiction of the court to render a personal judgment, that it should appear somewhere in the record, either in the application for the writ, or accompanying its service, or in the pleadings or the findings of the court, that the corporation was engaged in business in the state: *St. Clair v. Cox*, 106 U. S. 350.

26. Service of process beyond the jurisdiction of the court which issued it cannot oblige the party served to appear and defend in that court: *McEwan v. Zimmer*, 38 M. 765.

27. Under H. S. § 7317, providing that an action for work and labor may be commenced by service in any county adjoining that where suit is brought, no jurisdiction accrues unless the declaration shows not only that the work declared for was performed in the county where suit was brought, but also that plaintiff

iff resided in that county at the time suit was begun: *Smith v. Bresnahan*, 59 M. 346.

28. Where the service of original process appears from the return to have been legal and proper, although false, it gives the court jurisdiction: *Low v. Mills*, 61 M. 35.

29. No man's rights can be affected by legal proceedings, without notice of them, actual or constructive, and an opportunity to be heard: *Buck v. Sherman*, 3 D. 176.

30. No court can lawfully adjudge any person to be responsible in any shape without giving him a proper opportunity to be heard in his own behalf. This notice is necessary to give the court jurisdiction: *Montgomery v. Henry*, 10 M. 19.

31. Every person having rights to be affected by the litigation is entitled to notice and a day in court, or reasonable opportunity to appear and defend his interests: *Stoeckle v. Ehlers*, 37 M. 260; *Jewett v. Morris*, 41 M. 689; *Watson v. Hinchman*, 41 M. 716; *People v. Curtis*, 41 M. 723; *Noyes v. Hillier*, 65 M. 686 (April 28, '87).

32. The ascertainment that a debt is due and unpaid, and the determination of the amount, are judicial acts, and can only be made where the party to be bound has had an opportunity of being heard in due course of law: *Perkins v. Perkins*, 16 M. 162.

33. An order finally disposing of one's property rights in a proceeding to which he is not a party, and in which he has no chance to be heard, unless as a witness, is void: *Stoeckle v. Ehlers*, 37 M. 261.

34. The opportunity for a hearing, if the circumstances admit, is always presumed to be preliminary to the exercise of judgment where the result is to deprive one party of a right or to give the other an advantage: *Olmstead v. Farmers' F. Ins. Co.*, 50 M. 200.

35. There can be no constructive notice where there is no jurisdiction: *Harbaugh v. Martin*, 30 M. 284.

36. There can be no binding judgment against a party not actually served and not appearing: *Hamilton v. Plumer*, 67 M. 185 (Oct. 6, '87).

37. Personal judgments cannot rest on fictions of law nor be pronounced without an opportunity for hearing: *Hilton v. Briggs*, 54 M. 265.

38. Constructive notice of proceedings to enforce personal demands is insufficient: *Probate Judge v. Abbott*, 50 M. 279.

39. To give jurisdiction for the purpose of supporting proceedings against a garnishee some sort of service as to the principal defendant must be made within the county, either

upon the person, or upon property or credits. Merely taking out a summons which is never served is not enough: *McCloskey v. Wayne Circuit Judge*, 26 M. 100.

40. Proceedings *in rem* bind every one, but they must have been commenced by the proper person: *Besançon v. Brownson*, 39 M. 388.

41. The theory upon which a judgment *in rem* is regarded as binding upon all the world is that all the world have constructive notice of the seizure, with the cause and purpose of the taking, and the time and place at which any person may appear before a competent tribunal, and have a trial before the condemnation of his property: *Hibbard v. People*, 4 M. 125; *Wight v. Maxwell*, 4 M. 45.

42. To sustain proceedings *in rem* it is essential that notice be given, either general to all the world, or special to the parties interested: *Moore v. Wayne Circuit Judge*, 55 M. 84.

43. A discharge in bankruptcy cannot be treated by another court as void as to any particular creditor of whose person the bankruptcy court did not obtain jurisdiction by service of notice; bankruptcy proceedings are not strictly *in personam*: *Benedict v. Smith*, 48 M. 593.

(b) *Effect of appearance and plea.*

As to what constitutes an appearance, see APPEARANCE.

44. A general demurrer waives objections to jurisdiction of the person: *Thompson v. Mich. Mutual Benefit Assoc.*, 52 M. 522.

45. An appearance in an attachment case to object to the jurisdiction is not sufficient to confer jurisdiction to render judgment before thirty days, where there has been no personal service: *Wright v. Russell*, 19 M. 346.

46. A motion to set aside proceedings that are void for want of jurisdiction does not estop the moving party from objecting to their validity in a proceeding in which they are relied on by the opposite party: *Gould v. Jacobson*, 58 M. 288.

47. A plea in bar is a waiver of an objection to the jurisdiction of a court of general jurisdiction: *Webb v. Mann*, 3 M. 139.

48. By voluntarily appearing and pleading to the merits one waives all defects in irregularities in the service and return of process, and he cannot thereafter object to the manner in which he was brought into court: *Crane v. Hardy*, 1 M. 56; *Burson v. Huntington*, 21 M. 415; *Pardee v. Smith*, 27 M. 33; *Manhard v. Schott*, 37 M. 234; *Bryant v. Hendee*, 40 M.

543; *Austin v. Burroughs*, 62 M. 181; *Dailey v. Kennedy*, 64 M. 208.

49. When defendant pleads to the merits the character of the process used to commence the action becomes immaterial: *Miller v. Rosier*, 31 M. 475.

50. One who joins issue, and goes to hearing on the merits, is generally understood to waive objections to the process which he does not distinctly make known: *Maxwell v. Deens*, 46 M. 35.

51. A defendant appeared and pleaded to the merits. The constable then amended his return so as to show that the service was bad. Defendant did not ask leave to withdraw his plea, but moved to dismiss, and his motion was properly denied, as his pleading to the merits raised an issue and made the question of service of no importance: *Slattery v. Hilliker*, 39 M. 573.

52. If a defendant whose motion, on special appearance, to quash the proceedings for defective service, is overruled, pleads to the action and goes to trial on the merits, he waives his objection and submits himself to the jurisdiction: *Dailey v. Kennedy*, 64 M. 208.

53. One who pleads the general issue submits to the jurisdiction and cannot first raise the question thereof in the supreme court: *Grand Rapids, N. & L. S. R. Co. v. Gray*, 38 M. 461; *Gott v. Brigham*, 41 M. 227.

54. If one appears as administrator when he is not named as such, and pleads the general issue, he cannot deny the jurisdiction: *Singer Manuf. Co. v. Benjamin*, 55 M. 330.

55. The appearance of a defendant by putting in bail upon a *capias ad respondendum* is a waiver of any insufficiency in the affidavit for the writ: *Stewart v. Hill*, 1 M. 265.

56. After pleading and going to trial in an action begun by *capias*, defendant cannot insist on objections to the sufficiency of the affidavit for the writ: *Taylor v. Adams*, 58 M. 187.

57. One who pleads the general issue in an action on the case for deceit, and makes no defence to the jurisdiction, can hardly object afterwards to the affidavit for a *capias* in such proceeding: *Wasey v. Mahoney*, 55 M. 194.

58. Jurisdictional defects in an affidavit for a *capias* are not waived by putting in special bail and pleading in a cause: *Stephen-son's Case*, 32 M. 60.

59. Pleading to the merits does not waive the defects in an affidavit for the arrest of the defendant, if he has already moved to quash the proceedings and the motion has been denied: *Warren v. Crane*, 50 M. 300.

60. A defendant in the county court who,

after arrest, applied for and obtained an adjournment, was too late to object to irregularities in the preliminary proceedings on the adjourned day: *Stewart v. Hill*, 1 M. 265.

61. Where jurisdictional objections may be waived, a party cannot go to trial upon the merits and afterwards question the jurisdiction: *Home Ins. Co. v. Curtis*, 32 M. 402.

62. Appearing in an action of replevin and pleading to the merits will waive the objection that the writ was returnable on Sunday: *Pierce v. Rehfuß*, 35 M. 53.

63. By appearing and joining issue in replevin defendant waives the right to have the writ set aside for defects in the affidavit and bond: *Clark v. Dunlap*, 50 M. 492.

64. The irregularity in noticing an action in tort for trial before all the defendants are brought in is waived by appearing and asking that the cause be set down for trial for a day certain: *Cook v. Perry*, 43 M. 623.

65. A general entry of appearance by an appellee before motion to dismiss gives the circuit court jurisdiction: *McCombs v. Johnson*, 47 M. 592.

66. Appearance in response to a summons to answer a complaint waives the informality where the proper process should have been an order to show cause: *Curran v. Norris*, 58 M. 512.

67. Want of publication of notice in condemnation proceedings is waived by voluntary appearance: *East Saginaw & St. C. R. Co. v. Benham*, 28 M. 459.

68. Jurisdiction to render judgment *in rem* cannot be obtained by appearance and plea to merits by one claiming as owner: *Pine Sawlogs v. Sias*, 43 M. 356.

As to effect of appearance in garnishment proceedings, see GARNISHMENT, §§ 104, 154, 155.

(c) Consent.

69. Parties with whose consent and concurrence a circuit judge has acted as judge of the probate court cannot, in a collateral proceeding, question his right to act: *Landon v. Comet*, 62 M. 80.

70. The jurisdiction of courts is not subject to be enlarged or dismissed at the discretion of parties, and it cannot rest upon consent or waiver in cases where general public interests are to be affected by the litigation: *Youngblood v. Sexton*, 22 M. 406.

71. Jurisdiction of the subject-matter cannot be given by consent: *Beach v. Botsford*, 1 D. 199; *Clark v. Holmes*, 1 D. 390; *Spear v. Carter*, 1 M. 19; *Wilson v. Davis*, 1 M. 156; *Allen v. Carpenter*, 15 M. 25, 32.

72. Nor can a want of jurisdiction of the subject-matter be waived by the parties: *Farland v. Bentley*, 6 M. 281; *Moore v. Ellis*, 18 M. 77.

73. Defects in jurisdiction of subject-matter cannot be waived, even where the nature of the action is local or any element of locality is necessary to the jurisdiction: *Thompson v. Michigan Mut. Ben. Assoc.*, 53 M. 522.

74. Appearance and plea to the merits do not waive want of jurisdiction of the subject-matter: *Woodruff v. Ives*, 84 M. 330.

75. Jurisdictional objections are not waived by omission to insist upon them: *Attorney-General v. Moliter*, 26 M. 444.

76. Where a defect of jurisdiction exists, the defendant does not, by neglecting to take advantage of it on the first opportunity, waive the right to do so, as in case of a mere irregularity; but he may question the proceedings at any time: *Turrill v. Walker*, 4 M. 177.

77. A probate order, providing for the adjunction by the court of a claim against a decedent, contained the recital "the attorney for the executor of the last will and testament of said deceased being present in court and consenting thereto." Held insufficient in itself, and without at least identifying the attorney, to give the court jurisdiction: *Probate Judge v. Abbott*, 50 M. 278.

IV. HOW SHOWN; PRESUMPTIONS.

(a) Courts of general and courts of limited jurisdiction.

78. The American constitutional use of the word "inferior," as applied to courts, refers to relative rank and authority, and not to intrinsic quality: *Swift v. Wayne Circuit Judges*, 64 M. 479 (Jan. 20, '87).

79. The orders, judgments and decrees of the circuit courts of the United States cannot be collaterally impeached; nor need their records and proceedings show jurisdiction: *Ward v. Cozzens*, 8 M. 252.

80. The probate courts have, in probate matters, a general, and for the most part exclusive, jurisdiction; and their orders cannot be attacked collaterally upon any assumption that evidence was wanting to support jurisdictional allegations; their action, when properly invoked, is presumed to be rightful: *Morford v. Dieffenbacker*, 54 M. 598.

81. Probate courts have general jurisdiction in testamentary and other probate matters, and their action therein is not void where no fatal defect appears on the face of the proceedings; it may be reversible on ap-

peal, but must stand if an appeal is not taken: *Church v. Holcomb*, 45 M. 29.

82. Municipal courts, though not inferior tribunals, are limited in their jurisdiction by the residence of parties; and their jurisdiction should be shown on the record, though their judgments and decrees are binding until reversed even if it is not shown: *Grand Rapids, N. & L. S. R. Co. v. Gray*, 88 M. 461.

83. A municipal court is presumptively inferior to a circuit court so far as its jurisdiction is not of equal character: *Swift v. Wayne Circuit Judges*, 64 M. 479.

84. When a court — e. g., the superior court of Grand Rapids — is of limited or special jurisdiction, its jurisdiction must be shown in serving defendants: *Denison v. Smith*, 83 M. 155.

85. Inferior jurisdictions, not proceeding according to the course of the common law, are confined strictly to the authority conferred upon them: *Wight v. Warner*, 1 D. 384; *Clark v. Holmes*, 1 D. 390; *Truesdale v. Hazzard*, 2 M. 844, 848; *Chandler v. Nash*, 5 M. 409; *Saunders v. Tioga Manuf. Co.*, 27 M. 520.

86. The facts necessary to give them jurisdiction must appear affirmatively in their proceedings and cannot be presumed: *Ibid.*

87. They must have jurisdiction of the person by means of the proper process or appearance of the party as well as of the subject-matter of the suit; and when they have not such jurisdiction their proceedings are absolutely void, and they become trespassers by any act to enforce them: *Clark v. Holmes*, 1 D. 390.

88. The jurisdiction of courts of inferior and limited jurisdiction must appear on the face of their proceedings: *Rash v. Whitney*, 4 M. 495.

89. In special proceedings, not according to the course of the common law, jurisdiction must affirmatively appear on the record: *Chandler v. Nash*, 5 M. 409.

90. In a special proceeding, regulated by and entirely dependent upon the statute, the officer before whom the proceeding takes place has no authority except what the statute gives him, and if the case presented does not come within all the requisites prescribed by the statute, he has no jurisdiction, and everything necessary to confer jurisdiction must appear upon the record: *Elliott v. Dudley*, 8 M. 62.

(b) Presumption in favor of court's action.

91. Presumptions support judicial action: *Lymburner v. Jenkinson*, 50 M. 488.

92. Every reasonable intendment will be made in favor of a jurisdiction once regularly and fully vested, and a legislative enactment will not be construed to operate to oust such a jurisdiction unless such an intent is clearly expressed: *Crane v. Reeder*, 28 M. 527.

93. It will be presumed in favor of a judgment of a court of record, which proceeds according to the course of the common law, that jurisdiction of the parties was duly obtained: *Arnold v. Nye*, 28 M. 286.

94. All reasonable intendments must be made in support of a judgment rendered in the proper tribunal on due service and without defence: *Marquette & P. R. M. Co. v. Morgan*, 41 M. 296.

95. Where a circuit judge has acted as judge of probate, it will be presumed, in the absence of any showing to the contrary, that the necessary jurisdictional facts existed authorizing him to do so: *Landon v. Comet*, 62 M. 80.

96. Jurisdiction is not to be presumed in the absence of facts in the record to establish it: *Gould v. Jacobson*, 58 M. 288.

97. In aid of a replevin judgment of a court of record it is presumed that all proceedings essential to its validity were taken; as that an affidavit accompanied the writ: *Jennison v. Haire*, 29 M. 207.

98. In special proceedings, such as attachments, jurisdiction is not to be presumed: *Goodrich v. Burdick*, 26 M. 39.

99. No presumption of jurisdiction can be indulged in special proceedings against non-residents: *Platt v. Stewart*, 10 M. 260.

100. The courts of a sister state, in a cause within and between parties subject to their jurisdiction, are entitled to so much respect, at least, that they should not, without proof, be presumed guilty of wrong and oppression: *Graydon v. Church*, 7 M. 36.

101. If the record of a court of general jurisdiction of another state does not show either that the court had, or that it had not, jurisdiction, jurisdiction will be presumed: *Wilcox v. Kassick*, 2 M. 165.

102. When the record shows that the process was not personally served, and that the defendant did not appear personally in the suit, but that an attorney appeared for him and made defence, the authority of such attorney to appear for him will be presumed. But whether the authority may be disproved, *quere: Ibid.*

103. Where the record of a judgment discloses that an attorney of the court assumed to answer for a defendant, and consented in writing that a judgment might be entered

against him, the supreme court will assume, in the absence of evidence to the contrary, that the attorney was duly authorized. This would be sufficient evidence of jurisdiction of the parties: *Arnold v. Nye*, 28 M. 286.

104. Until the contrary is shown it must be presumed that an attorney in the circuit court has authority to appear for a client whose appearance he has entered in due form: *Norberg v. Heineman*, 59 M. 210.

105. A justice's judgment cannot be held invalid upon a mere presumption that the justice had lost jurisdiction, if his docket shows the parties were regularly brought into court: *Schlatterer v. Nickodemus*, 50 M. 315.

106. When the jurisdiction of a justice of the peace is once shown, and the question is whether he has lost jurisdiction to determine the amount of costs, it must be presumed, in support of the judgment, that the justice acted regularly and that his proceedings were valid, unless the record shows the contrary: *Saunders v. Tioga Manuf. Co.*, 27 M. 520.

V. ERRORS AND IRREGULARITIES AS AFFECTING JURISDICTION; WANT OF JURISDICTION.

107. An irregularity is such a defect in legal proceedings as may be waived; a nullity is one that cannot: *Jenness v. Lapeer Circuit Judge*, 42 M. 469.

108. Proceedings in another court, when introduced collaterally, cannot be questioned for error or irregularities where no jurisdictional defect is alleged against them: *Mitchell v. Chambers*, 48 M. 150.

109. A complaint not technically accurate but sufficient to give jurisdiction is not open to collateral attack: *Pardee v. Smith*, 27 M. 38.

110. A court of law will not in a collateral case review irregularities in the procedure of a court of equity, if they were not jurisdictional: *Ruggles v. First National Bank*, 43 M. 192.

111. Where trover is brought against a foreign corporation and personal service of the writ is made upon the proper officer, the omission to notify the home office of the suit, as provided by law, is a mere irregularity and not a jurisdictional defect: *Emerson, etc. v. McCormick Harvesting Co.*, 51 M. 5.

112. The special statutory methods of obtaining jurisdiction, where actual notice is not given, stand entirely on their own regularity, and, if not regular, proceedings based on them are nullities. But where personal service has been had, further proceedings are not necessarily fatally defective for all purposes, es-

pecially if rights based on them are allowed to become established by lapse of time without resorting to common-law remedies to set such proceedings aside: *Granger v. Superior Court Judge*, 44 M. 385.

113. Defects in notice are waived if no seasonable complaint is made where the party notified has already been regularly served and suit is fairly progressing: *Ibid*.

114. A non-resident waives his exemption from the process of even a local court of general jurisdiction if he does not object seasonably: *Thompson v. Mut. Benefit Assoc.*, 52 M. 523.

115. After pleading and going to trial the right of a defendant to relief because of misconduct in the service of process upon him rests in the discretion of the court: *Greeley v. Stilson*, 27 M. 153.

116. A want of jurisdiction cannot be cured by statute: *Hart v. Henderson*, 17 M. 218.

VI. CONFLICT OF JURISDICTION.

117. When a court of competent jurisdiction has become possessed of a case, its authority continues subject only to the appellate authority, until the matter is finally and completely disposed of; and meanwhile, no court of co-ordinate authority is at liberty to interfere with its action; therefore a bill will not lie in one court to cancel for fraud a judgment entered in another court of competent jurisdiction to dispose of such a charge: *Maclean v. Speed*, 53 M. 257.

118. The court that first obtains jurisdiction of the cause has exclusive right to decide the matter in issue, and any other court, not appellate, which subsequently assumes to act in the matter, must, when this priority of jurisdiction is brought to its attention, proceed no further: *Barnum Wire, etc. Works v. Speed*, 59 M. 272.

119. The pendency of a merely colorable suit in another jurisdiction will not stay proceedings in a court which has jurisdiction of the matter: *La Grange v. State Treasurer*, 24 M. 468.

120. A suit for the surrender and cancellation of municipal bonds deposited with the state treasurer, but declared void under the laws of the state, will not be affected by proceedings to obtain them for the corporation, begun by stockholders thereof in a United States court, when the corporation itself could not lawfully sue the maker or depository in any but a state court, and would not then be permitted to recover the bonds. Such proceedings are a mere evasion of jurisdiction,

and no court will be presumed to sanction them: *Ibid*.

121. A party will not be compelled to give up a legal remedy for an equitable one, and equitable jurisdiction can never supplant legal jurisdiction: *Ibid*.

122. The fact that there is a specific remedy in equity does not necessarily oust the jurisdiction of a common-law court, but only appeals to its discretion, which may be exercised where the circumstances call for prompt interference by the courts: *Tawcas & B. C. R. Co. v. Iosco Circuit Judge*, 44 M. 479.

123. If the process of a court is used in contempt of its authority or to the prejudice of its proceedings, it may be safely left to that court to assert its dignity and redress the wrong; but if a court allows its process to be abused to the injury or oppression of any person, any other court of competent authority should interfere for his protection: *Watson v. Superior Court Judge*, 40 M. 729.

124. A decree by a federal court cannot affect strangers to the record, or interfere with the regular probate of an estate in a state court which has jurisdiction: *Dickinson v. Seaver*, 44 M. 624.

125. The court of chancery will not restrain a suit or proceeding previously commenced in a court of a sister state or in any of the United States courts: *Carroll v. Farmers', etc. Bank*, H. 197.

126. A court of this state cannot restrain an action brought upon its judgment in a neighboring state, nor can it dictate the proceedings in such action; but it can entertain a bill to set aside for fraud such a judgment, even though it has been made the foundation of a suit in another state: *Edson v. Cumings*, 52 M. 52.

127. The process of a court is of no force or validity beyond its territorial jurisdiction: *Tyler v. People*, 8 M. 320.

128. The courts of one sovereignty cannot make orders or confer appointments to operate of their own force upon titles, or confer a right to exercise a trust in the disposition of property lying within the territory of another sovereignty: *Sheldon v. Rice*, 30 M. 296.

129. The jurisdiction of the courts of one state cannot operate directly, by their decrees or judgments, upon real property situated in another, or affect personal property or rights in action to the prejudice of creditors in the latter state: *Graydon v. Church*, 7 M. 86.

130. The judgment of a Canadian or any foreign court upon service of its process made in Michigan is not binding on a defendant

who refused to recognize its jurisdiction; and it will not support an action in our courts: *McEwan v. Zimmer*, 38 M. 765.

Effect of pending suit in admiralty on suit in common-law court, see ACTIONS, §§ 104, 105.

As to the jurisdiction of the federal and state courts with reference to each other, see COURTS, §§ 134-155.

JURY.

I. SELECTING AND SUMMONING.

II. COMPETENCY.

(a) *In general*.

(b) *Alienage*.

(c) *Opinions and impressions*.

III. EXCLUSION BY COURT.

IV. CHALLENGES.

(a) *Right of challenge*.

(b) *Practice*.

V. SWEARING THE JURY.

As to the constitutional right of jury trial, and the waiver thereof, see CONSTITUTIONS, §§ 69-101, 260-276.

As to the right of jury trial and the waiver thereof, generally, see PRACTICE, II, (b); also, JUSTICES OF THE PEACE, IV, (b).

As to INSTRUCTIONS TO JURIES, see that title; also, CRIMES, IV, (c), 5.

As to conduct of jury, see CRIMES, IV, (c), 6; PRACTICE, III, (b).

As to verdict and findings, see CRIMES, IV, (c), 7; PRACTICE, III, (d), (e); JUSTICES OF THE PEACE, IV, (d).

I. SELECTING AND SUMMONING.

As to validity of certain statutory provisions as to selecting, etc., see CONSTITUTIONS, §§ 76-80, 485, 645.

1. When a jury of persons possessing a particular qualification is required, the proper course is for the order of the court to direct the summoning of such persons: *Manafield, Coldwater & L. M. R. Co. v. Clark*, 23 M. 519.

2. H. S. § 7554, directing that the supervisor and township clerk of each township, and in cities the supervisor or assessors as the case may be, and alderman of each ward or assessment district, shall make a list of persons to serve as petit jurors, does not, *it seems*, apply to a city by whose charter the assessor is a city officer and assesses all the property of the city, but does apply to cities incorporated under the general law, in which the assessor is a ward officer acting only within the limits of his

ward: *Hewitt v. Gage*, 71 M. — (July 11, '88).

3. And said § 7554 did not repeal the provision in the charter of East Saginaw (Local Acts 1869, p. 432) requiring the city assessor to prepare the jury list from that city, and, if it did, the repealed provision was re-enacted by Local Laws 1885, p. 365, § 5: *Ibid*.

4. H. S. § 7556 provides that the jury lists "shall contain not less than one for every 100 inhabitants of such township or ward, computing according to the last preceding census, and having regard to the population of the county, so that the whole number of jurors selected in the county shall amount to at least 100, and not exceeding 400, one-half of whom shall be designated as petit jurors, and one-half as grand jurors." *Held*, that where the population of a county exceeds 40,000, as shown by such census, the ratio of population to the juror must be increased; that an excess of jurors returned is ground of challenge to the array, but does not wholly invalidate the list, which may be corrected by striking off all names listed below the statutory number first appearing: *Ibid*.

5. The officer who makes the jury list must be disinterested: *People v. Felker*, 61 M. 114.

6. Unless the contrary is shown it will be presumed that officers charged with the drawing and summoning of jurors have correctly performed their duty: *People v. Coughlin*, 67 M. 466 (Nov. 8, '87).

7. An order of court directing that a jury be "drawn and summoned in pursuance of the statute" for the general purposes of the term means that the jury be drawn from the county at large (H. S. § 7578), and is legal; it need not specify the townships or supervisor districts: *Ibid*.

8. An order under H. S. § 7578, directing petit jurors to be drawn and summoned for the general purposes of the term, may properly direct more than twenty-four to be drawn: *Ibid*.

9. The court having ordered a jury to be drawn and summoned from the body of the county for the general purposes of the term, as provided by H. S. § 7578, the respondent in a criminal case challenged the array because two townships, including the vicinage of the crime, were not represented. It not appearing that the officers who drew the jury had arbitrarily left the townships out, or that the lists of those townships had not already been exhausted, the challenge was *held* bad: *Ibid*.

10. Where the court ordered fifty additional jurors (instead of twenty-four, as provided by H. S. § 7576), some of whom sat on

defendant's trial with full knowledge, on his part, of all the facts, and without objection from him, it was held that the irregularity was waived: *Bronson v. People*, 32 M. 34.

11. Under H. S. 7578 the jurors should be drawn from the vicinity of the place where the court is held; and the order for the drawing should purport to be made for the purpose of getting jurors near the county seat, and upon the judge's motion and for the general purposes of the term, and not for any particular case: *People v. Hall*, 48 M. 483.

12. Under H. S. § 7567, a jury drawn three weeks before trial for a particular case of homicide is illegal if taken from only part of the townships in the county, and those not adjoining the county seat, nor including the locality of the offence: *Ibid.*

13. A challenge to the array cannot be based on the neglect to return jury lists from certain townships in the county; nor on the omission of the county clerk, on drawing a jury, to return the names drawn to the proper packages for each township, until the whole list for all the townships is exhausted: *People v. Coffman*, 59 M. 1.

14. This court was equally divided on the question whether a challenge to the array in the superior court of Detroit was properly overruled where interposed on the ground (1) that the judge was not present when the names of the jurors were deposited in the jury box and those of former jurors removed; (2) that he did not determine the number to be drawn for the term, but that twenty-four were drawn, and he was not present at the drawing; (3) that they were drawn by the sheriff and the minute was kept by the clerk; (4) that the affidavit accompanying the list of 300 jurors filed in the clerk's office did not show in detail the proceedings taken to select the list, but only alleged that, as affiant verily believes, it was done in accordance with the statute: *Gott v. Brigham*, 45 M. 424.

15. Under H. S. § 7567 the clerk must draw the names of the jurors from the box, and it is cause for challenge to the array that the sheriff drew the names, and that the clerk only announced and made a minute of those drawn: *People v. Labadie*, 66 M. 702 (July 7, '87).

16. H. S. § 7600 provides that when a jury has been sworn to try an issue the ballots containing their names shall be kept apart from the other ballots until the jury is discharged. *Held*, that it is not necessary to wait until the jury is discharged and the ballots returned to the slip-box before proceeding to draw another jury from the slip-box for the trial of the

next case, whether criminal or civil: *People v. Craig*, 48 M. 502.

17. Where two persons have been indicted jointly and have demanded separate trials, and one has been tried and the jury discharged, it seems that the clerk of the court is not bound to return the names of the jurors to the slip-box before drawing a jury for the trial of the other: *Ibid.*

18. Where a person jointly indicted with another, but tried separately, challenged the array on the ground that their names had been drawn from a box to which the names of the jurors who tried the other person had not been returned, though the jury had been discharged, it was held that the error, if any, was cured by the judge's offer to have a new jury drawn from a box containing the names of all the jurors, the challenged jury not having been sworn, or the prisoner put in jeopardy: *Ibid.*

19. Where the lists of grand and petit jurors were put into one box, and several of the jury drawn from the box turned out to have been returned as grand jurors, and not as petit jurors, it was proper to discharge all the panel, and to order a new jury drawn from the names properly returned: *Atkinson v. Morse*, 63 M. 276.

20. Jurors drawn under C. L. 1871, § 6001 (as amended, H. S. § 7578), were drawn not merely for a particular case, but for the term, or balance of the term, and it was competent for the court to direct them to be drawn from the jury-box or to be selected by the sheriff, and to order them to be summoned to attend forthwith, or at a subsequent or adjourned day of the term: *People v. Jones*, 24 M. 215.

21. Where the jurors so summoned actually attended it was held that misrecitals in the copy of the order upon which the sheriff made his return were immaterial, as was also the manner of service, and that respondent could not object on the ground of defects in the mode of notifying the jurors: *Ibid.*

22. A conviction by jurors properly drawn and impanelled will not be disturbed because the jurors were not summoned by the proper officer: *People v. Williams*, 24 M. 156.

23. An order made by the county judge, under laws of 1848, p. 237, for summoning a jury to try a cause before the circuit judge, more than three days before the day assigned for the trial, was held sufficient: *People v. Doe*, 1 M. 451.

24. It is no ground of challenge to the array that the jury-lists were not returned until after the time designated by law: *Thomas v. People*, 39 M. 309.

II. COMPETENCY.

(a) *In general.*

25. A nephew of one of the parties is an incompetent juror at the common law: *Hasceig v. Tripp*, 20 M. 216.

26. A juror in a criminal prosecution is not rendered incompetent by the fact that he is an own cousin of the prosecuting attorney within the second degree of consanguinity: *People v. Waller*, 70 M. 237 (May 11, '88).

27. It is not error to reject as juror one who is in the employ of one of the parties: *Goodrich v. Burdick*, 26 M. 89.

28. A juror who has already sat upon one trial during the same term is not challengeable under H. S. § 7584, authorizing the challenge of those who have served upon the regular panel within the year. *The service intended is for a whole term and not merely one case: *Burden v. People*, 26 M. 162.

29. Whether a talesman who has sat upon one case during the term may be challenged for that cause if called again during the same term, *quere*. But it is not error to reject him: *Grand Rapids Booming Co. v. Jarvis*, 30 M. 308.

30. H. S. § 7584a, in providing that it shall be a ground for challenge if a juror has already served in the same court within a year, excludes one who has served as talesman in a street-opening case: *Williams v. Grand Rapids*, 53 M. 271.

31. It is within the discretion of a court to sustain a challenge for cause where the juror is shown to have been seen talking with the agent of the adverse party and the agent suspended the conversation on the appearance of opposing counsel: *Monaghan v. Agricultural F. Ins. Co.*, 53 M. 238.

32. It is not good ground for a challenge for cause that the juror has already been peremptorily challenged upon the trial of another prisoner charged with the same crime; it cannot be assumed that it will prejudice him in a different case: *Cargen v. People*, 89 M. 549.

33. The presence upon jury of talesman over sixty years old is not ground for challenge to the array, but will sustain a challenge for cause, as the only persons qualified for talesmen are those who are not exempt from jury duty (H. S. § 7555): *People v. Bauermann*, 52 M. 584.

34. The fact that a juror summoned as a talesman was not named on any of the assessment rolls of the county either for the year in which the trial took place or for any preced-

ing year did not disqualify him from jury duty: *Stewart v. People*, 23 M. 63.

35. The incompetency of some of the jurors returned by the sheriff does not affect the array if those sworn were competent: *Grand Rapids v. Grand Rapids & I. R. Co.*, 58 M. 642.

36. If, in a street-opening case, a juror is specially interested he is disqualified, and may be challenged for cause: *Kunding v. Sagnaw*, 59 M. 355.

37. The record in error showed that talesmen were called and sworn on a jury, but did not show that they had the requisite qualification of jurors. It was held — no challenge appearing to have been taken on that ground — that they must be presumed to have been properly qualified: *The Milwaukee v. Hale*, 1 D. 306.

(b) *Alienage.*

38. An alien (who is not an elector) is not a competent juror; and if one of the panel is an alien, and the prisoner is not aware of that fact until after verdict, it is a mistrial: *Hill v. People*, 16 M. 351.

39. But in a civil case a juror's disqualification by alienage not discovered until after verdict is not ground for a new trial: *Johr v. People*, 26 M. 427.

40. A juror, like an elector, may be a foreigner not yet naturalized, but who has declared his intention to become a citizen; the simple fact of alienage does not disqualify him, and nothing will be presumed against his right to act: *People v. Scott*, 56 M. 154.

41. An alien can be a juror if he can vote: *People v. Rosevear*, 56 M. 158.

(c) *Opinions or impressions.*

42. A juror who testifies that he is so impressed with the guilt of the accused as to need evidence to overcome his impressions is partial and incompetent: *People v. Shufelt*, 61 M. 237.

43. A juror who has no fixed or positive belief, but who would have an opinion if rumors that he has heard are true, is not incompetent: *Ibid*.

44. The opinion entertained by a juror which disqualifies him is an opinion of that fixed character which repels the presumption of innocence in a criminal case, and by which in the juror's mind the accused stands condemned already: *People v. Barker*, 60 M. 277.

45. A juror has no impressions that will disqualify him if he says he could neither

acquit nor convict without knowing more of the case: *People v. Gage*, 62 M. 271.

46. A person who has formed and holds an opinion that mill-dams generally in that part of the country are nuisances, and that all he is acquainted with are such, is not a competent juror for the trial of an indictment for nuisance in keeping up a mill-dam, though he states that he is not much acquainted with the dam in question, and has not formed or expressed any opinion in regard to it: *Crippen v. People*, 8 M. 117.

47. The law does not require a juror to be entirely unimpressed with any opinion as to the guilt or innocence of the person on trial, but simply that he shall not have an opinion of such a fixed and definite character as to leave a bias on his mind which will preclude his giving due weight to the presumption of innocence: *Holt v. People*, 13 M. 224.

48. The statement of one called as a juror that he has formed a partial opinion as to the guilt or innocence of the prisoner, from rumors heard in the streets, but not a positive opinion, does not establish his incompetency: *Ibid.*

49. A juror's belief that the crime with which the prisoner is charged has been committed by some one is not ground for a challenge for cause: *Stewart v. People*, 23 M. 63.

50. A juror who is so impressed with the guilt of the accused as to need evidence to overcome his impressions is not impartial; and it is useless to ask him whether he can return a just and impartial verdict: *Stephens v. People*, 38 M. 739.

51. A juror's opinion as to the guilt or innocence of the accused must not be such as will prevent his giving due weight to the presumption of innocence: *Ibid.*

52. A juror who believes that he can render an impartial verdict according to the evidence is not disqualified by having read a newspaper item from which he has formed an opinion which, though not of a fixed character, it would take evidence to remove: *Ulrich v. People*, 39 M. 245.

53. A juror in a murder case who testifies that he has a positive opinion as to whether deceased had been murdered, but has formed none as to the guilt of the accused and has no bias, and believes that he can render an impartial verdict according to the evidence, is not disqualified: *Cargen v. People*, 39 M. 549.

54. Where a juror challenged for opinion shows by his answer that he has no definite recollections there is no apparent ground for holding him disqualified: *Sullings v. Shakespeare*, 46 M. 408.

III. EXCLUSION BY COURT.

55. A court may reject a juror in its discretion, on a ground which would not be strictly sufficient to sustain a challenge for cause. Where a jury was finally obtained to which neither party objected, the fact that the court set aside two jurors without any challenge, because from their examinations they did not seem to be entirely impartial, and excused a third because he was deaf and did not sufficiently understand English, was not a ground of error: *Atlas Mining Co. v. Johnston*, 23 M. 36.

56. A juror may be excused at any time before he has been sworn, for any reason personal to himself which seems sufficient to the judge. So held where the excuse was that he was to be a witness in the next case on call: *People v. Carrier*, 46 M. 442.

57. Courts should protect the rights of parties in selecting jurors, and may properly exclude any incompetent or drunken person, even against objection: *Torrent v. Yager*, 53 M. 506.

58. The circuit judge is invested with a certain degree of discretion in selecting jurors for a panel. Such discretion is to be exercised in seeing that proper and competent men are selected; and so long as the case of the parties is not prejudiced by the exercise of such discretion, they cannot complain: *People v. Barker*, 60 M. 277.

59. A juror who had been selected, the panel, however, not having been completed, failed to appear in court after an adjournment, and was found in a room of an hotel playing pool. Held, that such reckless disregard of his duty showed that he was unfit to serve, and that the court was justified in excluding him from the panel: *Ibid.*

60. After the jury had been completed and sworn, but before any further proceedings, it was discovered that one of the members of the panel was an alien. Held, that it was proper for the court to order him to stand aside and be discharged and another juror to be drawn in his stead, allowing respondent in the meantime to challenge the remaining eleven either for cause or peremptorily if he wished to do so: *Ibid.*

61. The fact that a party has exhausted all his peremptory challenges does not make it error for the judge to excuse of his own motion a juror already examined who is not sufficiently acquainted with the English language to qualify him to sit: *O'Neil v. Lake Superior Iron Co.*, 67 M. 560 (Nov. 10, '87).

IV. CHALLENGES.

(a) *Right of challenge.*

62. It seems that a challenge to the array will lie on the action of jury commissioners wherever at common law it would lie to the action of the sheriff or his subordinates in selecting or summoning the jury: *People v. Harding*, 53 M. 49.

63. The right of challenge for cause exists in all cases where the jury is a common-law one, and it cannot be taken away by statute, or abrogated by a statute's omission to provide for it: *Kundinger v. Saginaw*, 59 M. 355.

64. Where counts for different offences are joined respondent has a right to the full number of challenges to which he is entitled on each count: *People v. Sweeney*, 55 M. 586.

65. The distinction between challenges for favor and challenges for cause is practically abolished by H. S. § 7607, all challenges being now for cause, and to be tried in the same manner; and when there is no dispute about the facts upon which a challenge is based, the question arising upon it is purely one of law, and open to review upon exceptions: *Holt v. People*, 13 M. 224.

66. There is no practical difference in criminal cases between a challenge for principal cause and a challenge for favor; and a judge in ruling upon a challenge should make his ruling cover both grounds: *Stephens v. People*, 38 M. 739.

67. Challenges for cause can be made by either side until the jury is sworn: *Scripps v. Reilly*, 38 M. 10.

68. The number of peremptory challenges to which an accused person is entitled depends upon the statute relating to the crime with which he is charged: *People v. Comstock*, 55 M. 406.

69. Each defendant who pleads separately by different counsel is separately entitled to the two peremptory challenges allowed by statute. C. L. § 6027 (see H. S. § 7607): *Stroh v. Hinchman*, 37 M. 490.

70. The right to the peremptory challenge of a juror examined on his *voir dire* is not lost because not exercised until the rest of the panel had been examined. It may be exercised at any time before the juror is sworn: *Hunter v. Parsons*, 22 M. 96.

71. The statutory right of challenging peremptorily may be exercised so long as the jury is not sworn, and notwithstanding the previous declaration of the party exercising it that he is satisfied with the jury: *Jhons v.*

People, 25 M. 499; *People v. Carrier*, 46 M. 442; *Hamper's Appeal*, 51 M. 71.

72. A peremptory challenge is not allowable in a criminal case after the jury has been sworn: *People v. Dolan*, 51 M. 610.

73. H. S. § 7607, allowing peremptory challenges in "civil cases," does not apply to special proceedings not in the ordinary course of law, and which are regulated entirely by particular statute. Challenges for cause are necessary in all inquiries by jury, but peremptory challenges in other than criminal proceedings are confined to cases where the statutes have directly provided for them: *Convers v. Grand Rapids & I. R. Co.*, 18 M. 459.

74. Where parties impleaded together appear by the same counsel, and after their right of peremptory challenge is exhausted other counsel take charge of the case for part of them, the latter have no further right of challenge: *Fraser v. Jennison*, 42 M. 206.

75. Overruling a challenge for cause and compelling the party to resort to a peremptory challenge does not prejudice him where he still has a right of peremptory challenge which he does not use: *Sullings v. Shakespeare*, 46 M. 408; *People v. Barker*, 60 M. 277.

(b) *Practice.*

76. A challenge to the array must be in writing: *People v. Doe*, 1 M. 451; *Ryder v. People*, 38 M. 269.

77. On the impanelling of a jury it is irregular for counsel to put questions to the jurors called, without interposing any challenge; and no error can be assigned to the action of the court in allowing jurors thus questioned, but not challenged, to be sworn to try the case: *Crippen v. People*, 8 M. 117.

78. A person called as a juror is presumed to be qualified and impartial; and the party challenging assumes the burden of proving the contrary. He does not relieve himself of that burden until he has made out a *prima facie* case, or, in criminal cases, such a case as leaves the partiality of the juror in reasonable doubt: *Holt v. People*, 13 M. 224.

79. In a criminal case if the examination of a juror upon challenge leaves a reasonable doubt of his impartiality, the prisoner should have the benefit of the doubt, and the juror be excluded: *Ibid.*

80. The judge may examine jurors on the part of the prosecution if he chooses, but defendant's counsel are entitled to re-examine them: *Stephens v. People*, 38 M. 739.

81. Prejudice disqualifies a juror, and a party entitled to peremptory challenges should

be allowed to ask any reasonable questions that will tend to disclose it; as, *e. g.*, which way the juror would be inclined if the evidence was evenly balanced: *Monaghan v. Agricultural F. Ins. Co.*, 53 M. 288.

82. Where a juror is challenged for favor, the usual mode of trying his impartiality is by triers appointed for the purpose, on the demand of the challenging party. If the challenging party, when asked by the court how he will have the challenge tried, refuses to indicate the mode of trial, it may be tried by the court, by administering an oath to the juror, and propounding questions to him: *People v. Doe*, 1 M. 451.

83. If a party or his counsel interposes a challenge for favor, or raises any other preliminary question involving an inquiry, and then neglects or refuses to move the trial or examination thereof, he thereby waives such challenge or question: *Ibid*.

84. By going to trial without challenge a party waives any objection to the want of proper qualification of jurors, as well as to the sufficiency of the oath administered to the jury: *The Milwaukee v. Hale*, 1 D. 306.

85. In civil causes the proper time to make the necessary inquiries into the qualifications of jurors is before the trial, and not afterwards, and if not made then the objection will be deemed to have been waived: *Johr v. People*, 26 M. 427.

86. In a criminal case it is the defendant's duty to raise objection to any irregularity in the summoning and impanelling of the jury before the trial, and if he omits to do so, or to take exception, if overruled, he will be deemed to have waived the irregularity: *Bronson v. People*, 82 M. 34.

87. Where a party is informed during the progress of the trial that a juror is disqualified, but he omits to object until after verdict, on the ground that evidence of the disqualification is not sooner accessible, he will be held bound by the verdict: *Sleight v. Henning*, 12 M. 371.

88. The objection that jurors in a criminal case were accepted and sworn, whose examination showed that they were disqualified by opinions formed, is not considered on writ of error, where no exception was taken at the time and the question was first raised on a motion for a new trial after conviction: *Bronson v. People*, 82 M. 34.

89. Where one of the jurors had sat on a former trial of the same cause, and this fact was known to the counsel of one of the parties before the verdict was rendered, and he omitted to object until afterwards, it was held

that he was bound by the verdict: *Bourke v. James*, 4 M. 386.

90. Where the record shows that both parties have announced themselves contented with the jury, the previous rejection of a challenged talesman against objection will not be considered. Whether this rule will apply where a juror is admitted against a challenge for cause, *quere*: *Grand Rapids Booming Co. v. Jarvis*, 80 M. 303.

91. A party who aids in striking the panel, and who declares himself satisfied with it, cannot afterwards object that one of the jurors, to whom he made no objection, was not a freeholder as required by the statute: *Clark v. Drain Commissioner*, 50 M. 618.

92. The impanelling and final acceptance of a jury by a court is a judicial determination that the jurors are competent; and if any objection to the qualifications of a juror is known to a party before such determination, it cannot be raised afterward unless on exception to the overruling of a challenge: *People v. Scott*, 56 M. 154.

93. Where a juror on being examined as to his residence stated that he had come to the place to get work and had not got any yet, his answer suggested that he was not qualified; but if no objection was then made, or further examination had, it would be too late after the trial: *People v. Lange*, 56 M. 550.

94. No reasons for a challenge can be given on error to review the court's action in overruling it, except those given at the time: *Detroit, W. T. & J. R. Co. v. Crane*, 50 M. 182.

V. SWEARING JURY.

95. Where the record showed that the jury were "duly elected, tried and sworn," instead of that they were "sworn well and truly to try the issue," etc., it was held that the error, if any, must be regarded as clerical, and under R. S. 1838, pp. 461-2, might be amended after error brought: *The Milwaukee v. Hale*, 1 D. 306.

96. A stipulation was made between the plaintiffs on a note and one of the defendants that the cause might be dismissed as to him, but he did not avail himself of it, and no order of discontinuance was entered. Only one of the other defendants pleaded. Held, that the technical irregularity of swearing the jury to try the issue between the plaintiffs and the defendants, when no issue had been joined with two of them, was a harmless blunder, and as no order was entered on the stipulation the party with whom it was made remained a defendant in form: *Buhl v. Trowbridge*, 42 M. 44.

JUSTICES OF THE PEACE.

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As to criminal prosecutions before justices, see *CRIMES, V.*

As to proceedings on *ATTACHMENT, EXECUTIONS, FORCIBLE ENTRY, GARNISHMENT, REPLEVIN*, see those titles.

Appeals from justices, see *APPEAL, IV; CRIMES, V, (e).*

Certiorari to justices, see *CERTIORARI; CRIMES, V, (f).*

As to costs before justices, see *COSTS, §§ 2, 19, 21, 157, 309, 340, 341; CONSTITUTIONS, § 149.*

I. JURISDICTION.

- (a) *In general.*

1. Within the limits provided for by the state constitution, justices' courts are ordinary

courts of justice, not within the rigid rules applying to courts of special and limited jurisdiction proceeding contrary to the course of the common law; and all courts take judicial notice of the extent of their jurisdiction and powers: *Goodsell v. Leonard*, 23 M. 374.

2. The jurisdiction conferred upon justices' courts by the constitution is beyond the reach of legislation: *Allen v. Kent Circuit Judge*, 87 M. 474.

3. Justices of the peace have constitutional jurisdiction in civil cases, and are necessary magistrates in cities, as well as outside of them; their criminal jurisdiction is given them by the general statutes, but is to some extent contemplated by the constitution, and in cities can only be restrained by the special municipal criminal jurisdiction: *Allor v. Wayne County Auditors*, 48 M. 76.

As to the criminal jurisdiction of justices, see *CRIMES, V, (a).*

4. A justice represents the state rather than his township; his officers may be any constables of the county as well as the sheriff: *Faulks v. People*, 39 M. 200.

5. A justice's court, being one of inferior and limited jurisdiction, is confined strictly to the powers conferred upon it, and its proceedings must appear to be within those powers: *Wight v. Warner*, 1 D. 384; *Clark v. Holmes*, 1 D. 390; *Shadbolt v. Bronson*, 1 M. 85.

6. The jurisdiction of justices of the peace cannot be presumed, but must appear affirmatively in their proceedings: *Wight v. Warner*, 1 D. 384; *Clark v. Holmes*, 1 D. 390; *Spear v. Carter*, 1 M. 19; *Saunders v. Tioga Manuf. Co.*, 27 M. 520.

7. A justice is not required to hold courts always at one place; he may hold them sometimes in one place and sometimes in another, according to temporary convenience: *Faulks v. People*, 39 M. 200.

8. And a justice who lives in a village that lies in two townships may be authorized by statute to hold court in that part of the village that lies in the township he does not live in: *Ibid.*

9. That a justice placed by change of boundaries beyond his township loses his office, see *People v. Geddes*, 8 M. 70.

10. Where a cause was called in a bar-room and adjourned to an adjoining room in the same house for trial, the justice having no knowledge that spirituous liquors were sold there, and there being no proof of such sales, judgment was held good (see H. S. § 6831): *Savner v. Chipman*, 1 M. 116.

11. A justice of the peace cannot be both

magistrate and counsel: *Stensrud v. Delamater*, 56 M. 144.

12. Suit upon a promissory note cannot be brought before a justice to whom it has been indorsed for collection, as he thereby becomes the plaintiff's agent therefor: *West v. Wheeler*, 49 M. 505.

13. A justice to whom a claim has been sent for collection with instructions that it is not to be sued until he has notified defendant that it will be sued if not paid is not thereby disqualified from hearing the case, as an interested party, even though he is to be compensated whether suit is brought or not: *Moon v. Stevens*, 53 M. 144.

14. One justice cannot garnish a judgment rendered by another. The judgment may always be paid to the justice who renders it, and he must issue execution on application by the prevailing party, unless he has some excuse for refusing it. No other justice has any statutory right to stay his acts or direct his conduct: *Stevens v. Woodburn Sarven Wheel Co.*, 48 M. 275.

And see GARNISHMENT, § 68.

15. The jurisdiction of justices in cases of forcible entry and detainer is wholly derived from H. S. ch. 286, "Of forcible entries and detainers," and its amendatory acts, and when exercising such jurisdiction they are not bound by any of the provisions of the justices' act (H. S. ch. 249), except so far as chapter 286 or its amendments may have adopted certain proceedings of the former, so as to make them substantially a part of the latter: *Dibell v. Brinkerhoff*, 22 M. 371.

16. Discontinuance of a suit after appeal is not a discontinuance of the appeal within the meaning of H. S. § 7023, which provides that on the discontinuance or dismissal of an appeal a justice shall proceed as if it never had been taken: *Franks v. Fecheimer*, 44 M. 177.

Security for costs need not be filed before process issues, to give jurisdiction: See COSTS, §§ 340, 341.

(b) Amount.

17. R. S. 1846 gave to justices of the peace original, but not exclusive, jurisdiction in actions wherein the debt or amount demanded did not exceed \$100: *Webb v. Mann*, 8 M. 189.

18. Justices have exclusive jurisdiction in civil matters where the debt or damages do not exceed \$100: *Strong v. Daniels*, 8 M. 466; *Raymond v. Hinkson*, 15 M. 113.

19. *Assumpsit* for breach of promise of marriage must be brought in justice's court if the damages do not exceed \$100: *Stortz v. Ingham Circuit Judge*, 38 M. 243.

20. H. S. § 6820, permitting an action of covenant to be brought in justice's court where there shall be a bond with a penalty exceeding \$150, is confined to bonds conditioned for the payment of a sum of money not exceeding \$150, or for the payment of instalments of money not exceeding in the aggregate \$150: *Bishop v. Freeman*, 42 M. 533; *Gray v. Stafford*, 53 M. 497.

21. *Assumpsit* will lie in justice's court upon an ordinary money bond for any amount within its jurisdiction that may be necessary to indemnify for the breach thereof, whatever the penalty of the bond may be: *Durfee v. Dean*, 53 M. 387.

22. Debt upon a probate bond whereof the penalty exceeds the jurisdictional limit of justices' courts cannot be brought therein: *Ibid.*

23. A bond not conditioned for the payment of any particular sum of money by the obligor, and containing no covenants, cannot be sued in justice's court if the penalty exceeds \$300: *Bishop v. Freeman*, 42 M. 533.

24. But otherwise if the penalty does not exceed that sum: *Gray v. Stafford*, 53 M. 497.

25. Justices have no jurisdiction in actions founded on tort, where the damages exceed \$100: *Wells v. Scott*, 4 M. 347.

26. Jurisdiction as to amount depends on the sum or damages claimed in the writ and declaration: *Strong v. Daniels*, 8 M. 466. See COURTS, § 23.

27. The amount claimed in the *ad damnum* clause is what determines a justice's jurisdiction in *assumpsit*, and plaintiff may remit part of the amount proved, or abandon and omit to prove part of the amount claimed: *Cilley v. Van Patten*, 68 M. 90 (Jan. 5, '88).

28. Where, in a justice's court, plaintiff obtains a verdict for \$100, in a case where double damages are allowed by statute, doubling such verdict does not oust jurisdiction: *Rosevelt v. Hanold*, 65 M. 414 (April 14, '87).

29. A justice's jurisdiction in garnishment does not depend on the amount due from the garnishee to the principal debtor, but upon the sum claimed to be due from the latter to the former: *Wetherwax v. Paine*, 2 M. 555.

30. An affidavit for a writ of replevin will not give a justice jurisdiction if it does not state that the property sought does not exceed \$100 in value; and the defect, unless waived, is fatal if seasonably urged. *Sager v. Shutts*, 53 M. 116.

31. Where the affidavit and declaration in replevin allege the value as less than \$100, testimony by plaintiff on appeal that the value is greater does not oust jurisdiction: *Dinnen v. Baxter*, 18 M. 457.

32. Where the affidavit, writ and declaration in replevin set forth the value of the property as not exceeding \$100, and defendant pleads the general issue, the fact that plaintiff's testimony on the trial shows the value to be greater does not oust the justice's jurisdiction: *Henderson v. Desborough*, 28 M. 170.

33. By pleading the general issue in such case defendant admits a justice's jurisdiction, and cannot afterwards question it on the ground that the value of the property exceeded the jurisdictional limit of \$100: *Ibid.*

34. A defendant who prevails in replevin before a justice may recover the value of the property replevied, not exceeding \$500, which is the constitutional limit of the jurisdiction of justices: *Ibid.*; *Humphrey v. Bayn*, 45 M. 565; *Chilson v. Jennison*, 60 M. 285.

35. The objection that the amount in controversy is beyond a justice's jurisdiction comes too late if raised for the first time on error after appeal: *Wells v. Scott*, 4 M. 347; *Tower v. Lamb*, 6 M. 362.

(c) Corporations.

36. Whether the recorder of the city of Grand Haven has jurisdiction, under the charter of that city, as an *ex officio* justice of the peace, to try an action for the tuition of non-resident pupils, brought by a school district, no part of which is within the city, *quere*: *Thompson v. Crockery School District*, 25 M. 488.

37. Under Const., art. 6, § 18, the legislature may lawfully exempt municipal corporations from the jurisdiction of justices: *Root v. Ann Arbor*, 3 M. 483.

38. Under present statutes justices have no jurisdiction of suits against municipal corporations: *Root v. Ann Arbor*, 3 M. 483; *Gurney v. St. Clair*, 11 M. 202.

39. The statute (H. S. § 5107) which in some cases allows school districts to be sued in justices' courts, *held* not applicable to a certain district: *Seeley v. Port Huron Board of Education*, 39 M. 486.

40. H. S. § 8055 does not allow garnishment before justices of municipal corporations: *Marathon School District v. Gage*, 39 M. 484.

41. But justices have jurisdiction of suits brought by municipal corporations: *Hart v. Port Huron*, 46 M. 428; *Eaton Rapids v. Hought*, 63 M. 871.

42. And in an action brought by a municipality defendant is entitled to all defences, including the right of set-off, that he would have if sued by an individual: *Eaton Rapids v. Hought*, 63 M. 871.

43. A poundmaster sued by a city before a justice, for fees collected, may set off a claim which he has against the city: *Ibid.*

44. An action will lie in justice's court against a foreign express company doing business in the county (H. S. § 3723); and if plaintiff is a non-resident, defendant may be brought in by short summons: *Gallagher v. American Express Co.*, 56 M. 13.

45. Since act 155 of 1873 (H. S. §§ 4362-4368) whatever may have been the case before, justices of the peace have no jurisdiction over foreign insurance companies: *Hartford Fire Ins. Co. v. Owen*, 80 M. 441.

46. An action on a labor debt may be brought in a justice's court against a corporation and stockholders jointly under H. S. § 4110: *Milroy v. Spurr Mountain Iron Mining Co.*, 48 M. 281.

47. Said § 4110 provides that in actions on labor debts the clerk of the court shall indorse directions on the execution. *Held* to refer to the officer issuing the execution, and not to exclude the justices' courts in which the justice is his own clerk from jurisdiction of such actions: *Ibid.*

48. Whether corporations were garnishable in justices' courts under C. L. 1871, § 5290, *quere*: *Hewett v. Wagar Lumber Co.*, 38 M. 701.

49. Under the justices' act of 1855, justices had no jurisdiction to issue attachments against foreign corporations: *Brigham v. Eglington*, 7 M. 291.

(d) Lands; easements.

50. A justice has no jurisdiction to try a cause in which the title to land comes in question, unless plaintiff's title be admitted: *Stout v. Keyes*, 2 D. 184; *Brooks v. Delrymple*, 1 M. 145; *Highway Commissioner v. Withey*, 52 M. 50.

51. Such admission would be a demurrer to a declaration alleging title: *Stout v. Keyes*, 2 D. 184.

52. A question of title to land is raised in an action of trespass brought before a justice, if plaintiff offers deeds in evidence of his right of possession, or claims such right under a third person whose ownership he proposes to show: *Gay v. Hults*, 55 M. 327.

53. Under a declaration against defendant for falsely representing himself to have title to a piece of land, which plaintiff was induced to buy of him, the title to the land must necessarily come in question: *Brooks v. Delrymple*, 1 M. 145.

54. Where a declaration in trespass avers

title in fee and possession of the *locus in quo*, describing the land, and defendants' plea denies such title, averring that the freehold is in one of the defendants and that both entered upon the premises by lawful right, the question of title to the land is involved: *Labeau v. Labeau*, 61 M. 81.

55. Where, in an action in justice's court for trespass to land, the declaration avoids claim of title, but plaintiff's evidence shows that the *locus* was in the public highway, plaintiff to sustain his action must show title to the adjoining land, and when he does so, if defendant does not admit it, the title to land is necessarily in issue, and H. S. § 6895 requires the justice to certify the cause to the circuit court: *Ostrom v. Potter*, 71 M. 44 (June 22, '38).

56. Deeds of land may be admissible as evidence in a justice's court for many purposes; and their admission will not sustain a presumption that the judgment in the suit was rendered in a case of which he had no jurisdiction as determining the title to real property: *Schlatterer v. Nickodemus*, 50 M. 315.

57. For the purpose of identifying and proving his title to personal property a party may show that it was taken off from certain lands, and that he was the owner thereof, but this does not bring the title to lands in question: *Hart v. Hart*, 48 M. 175.

58. A justice has no jurisdiction of an action for the disturbance of a right of way: *Fowler v. Hyland*, 48 M. 179.

59. Trespass *quare clausum*, consisting in allowing logs to accumulate upon the premises of another in consequence of the closing up of a navigable stream upon which they were floating, is not an action for the legal obstruction of a public easement within the meaning of H. S. § 6815, and is cognizable by a justice: *Williamson v. Haskell*, 50 M. 864.

(e) *Miscellaneous.*

60. Under R. S. 1838 justices had no jurisdiction in replevin: *People v. Jackson Circuit Judges*, 1 D. 303.

61. Justices have jurisdiction in replevin for beasts distrained or impounded: *Pistorius v. Swarthout*, 67 M. 186 (Oct. 13, '87).

62. H. S. § 6815, prohibiting suit in justice's court against an executor or administrator as such, precludes suit in that tribunal upon the representative's liability for any charge against the estate, whether he is sued in his official or in his individual capacity: *Basom v. Taylor*, 89 M. 682.

63. A justice has jurisdiction of an action of replevin against an administrator: *Singer Manuf. Co. v. Benjamin*, 55 M. 330.

64. A justice's jurisdiction of an action against an administrator cannot be questioned where defendant is not named as such and does not plead in abatement, but pleads the general issue and goes to trial on the merits: *Ibid.*

65. Where a mechanic, suing for his wages, makes the owner of a building on which he works a joint defendant with the contractor who hired him, and sues them in an appropriate form of action before a justice of the peace, the justice has jurisdiction to try the issue; and though he cannot enforce a mechanic's lien, an error in rendering judgment therefor, or in holding the owner personally liable, will not destroy his jurisdiction or make his judgment void and open to attack in a collateral action; and unless reversed on appeal or *certiorari* it must stand: *Smith v. Pearce*, 52 M. 870.

II. VENUE; REMOVAL OF CAUSE.

66. A justice has no jurisdiction of the person where neither of the parties, though resident in the state, lives in his county; but if any one of the parties on either side lives there, suit will lie in any township of the county where he resides and happens to be (H. S. § 6819): *Hall v. Shank*, 57 M. 36.

67. A justice of the peace of a city which lies within the limits of a township that corners with the township where defendant resides has jurisdiction of a suit against such defendant, though the city itself neither adjoins nor corners with such township: *Jebb v. Chicago & G. T. R. Co.*, 67 M. 180 (Oct. 13, '87).

68. The provision in the justice's act (H. S. § 6937) for the removal of a cause from before a justice who is a material witness applies only to suits at law, and has no application to a proceeding for the opening of a village street: *People v. Brighton*, 20 M. 57.

69. Until all the statutory conditions to the removal of a cause to another justice for trial have been complied with, *e. g.*, payment or offer of payment of the fees for making the transcript, as well as the costs of suit, the justice before whom the cause was commenced retains jurisdiction: *Oakley v. Dunn*, 63 M. 494.

70. As to transfer of replevin suit after abatement by justice's removal from the township, see *Kidder v. Merryhew*, 82 M. 470.

III. COMMENCEMENT OF ACTIONS; PROCEEDINGS BEFORE TRIAL.

(a) *Summons.*

1. Issuance, form, etc.

71. Under the justice's act, process of a justice's court in civil cases is not authorized to run into another county, or to be served beyond the bailiwick: *Hartford F. Ins. Co. v. Owen*, 30 M. 441.

72. Issue of justice's summons is a mere ministerial act and valid though done on a legal holiday: *Smith v. Ihling*, 47 M. 614.

73. Under H. S. §§ 6826, 6829, 6830, a long summons only is authorized if both plaintiff and defendants are residents of the county; and if either is a non-resident a short summons only is authorized (the latter point is not wholly accurate; see *infra*, § 74): *Allen v. Mills*, 26 M. 123.

74. Under H. S. § 6829, if the defendant be a non-resident of the county, the summons may be either long or short; but by § 6830, if the defendant be a non-resident, the summons must be a short one: *Moore v. Vrooman*, 32 M. 526.

75. Where the transcript of a justice's judgment shows nothing as to the residence of the parties, its validity will not be affected by the fact that the action in which it was rendered was begun by short summons and that the defendant did not appear. It will not be presumed, for defeating jurisdiction, that both parties resided in the county: *Allen v. Mills*, 26 M. 123.

76. The objection that plaintiff in an action brought in justice's court had improperly sued by a long summons is one that is waived by joining issue: *Hart v. Blake*, 81 M. 278.

77. The objection that a short summons was issued where a long one was prescribed by the statute may be raised in the cause itself before the justice, or on appeal or *certiorari*: *Allen v. Mills*, 26 M. 123.

78. Sunday is not included in the two days in which a justice's short summons may be made returnable (H. S. §§ 6829, 6830): *Simonson v. Durfee*, 50 M. 80.

79. A justice's summons, returnable not less than two days from its date, is defective if made returnable on the second day after it was issued: *Everts v. Fisk*, 44 M. 515.

80. In computing the time allowed for returning a justice's summons the day of service and the day of return are excluded: *Isabelle v. Iron Cliffs Co.*, 57 M. 120.

81. A justice's summons is not issued if merely delivered to the plaintiff and kept in his hands: *Howell v. Shepard*, 48 M. 472.

82. The filling up or alteration by a sheriff, under the authority of the justice, of the *teste* and return day of a justice's summons is forbidden by H. S. § 590, and, being illegal, makes the summons void: *Garrison v. Hoyt*, 25 M. 509.

83. Any alteration of the date and return day of a justice's summons, not made by the justice himself, or by another in his presence and under his direction, renders the summons void: *Ibid.*

84. A justice has no jurisdiction to issue a second summons and follow it with an attachment unless the statutory requirements as to service have been complied with; *e. g.*, in making a diligent effort to obtain personal service and in taking the full time allowed therefor before returning defendant "not found": *Isabelle v. Iron Cliffs Co.*, 57 M. 120.

85. A justice's summons was made returnable at one o'clock in the afternoon. It was read to defendant and a copy given him, which, however, specified one o'clock in the forenoon as the time for appearance. Defendant appeared at one in the morning, got the justice out of bed, and in plaintiff's absence took a nonsuit. But before the real time arrived he saw the original summons, which stated it correctly. *Held*, that the nonsuit was void: *Merrick v. Mayhue*, 40 M. 196.

2. Service and return.

86. The "competent person" empowered by H. S. § 6827 to serve a justice's summons must appear to have been personally designated by the justice, and must be selected upon sufficient inquiry to determine his competency: *Rasch v. Moore*, 57 M. 54.

87. The authority of a private person to serve a justice's summons must be indorsed thereon or no jurisdiction is acquired: *Rasch v. Moore*, 57 M. 54; *Union Mutual F. Ins. Co. v. Page*, 61 M. 72.

88. In indorsing upon a summons a deputization of authority to serve it the justice need not certify that the person authorized is of age and not interested in the suit. It is not presumed that he selects an incompetent person: *Buel v. Duke*, 38 M. 167.

89. A justice of the peace who authorizes a private person to serve a summons must assure himself that such person is not interested in the case: *Union Mutual F. Ins. Co. v. Page*, 61 M. 72.

90. An officer of a plaintiff corporation is not a disinterested person competent to serve a summons in the case: *Ibid*.

91. A constable cannot serve a summons in a cause wherein he is plaintiff: *Morton v. Crane*, 39 M. 526.

92. But such service is only an irregularity and is not ground for avoiding a judgment attacked collaterally: *Parmalee v. Loomis*, 24 M. 242.

93. A justice's summons under H. S. § 8055 in garnishment against a corporation cannot be served outside of the county: *Hebel v. Amazon Ins. Co.*, 33 M. 400.

94. The service upon foreign insurance companies provided by H. S. § 4331 is not applicable to justices' courts: *Hartford Fire Ins. Co. v. Owen*, 30 M. 441.

95. The act of 1849 (H. S. § 8147), authorizing the service of process against railroad companies upon conductors, etc., is not repealed, as respects justices' courts, by § 49 of the justices' act of 1855 (H. S. § 6862): *Fowler v. Detroit & M. R. Co.*, 7 M. 79.

96. The return to a summons in these words: "Served the within by reading personally,"—the statute requiring it to be served by reading it to defendant and delivering to him a copy,—is bad, and does not give the justice jurisdiction: *Campau v. Fairbanks*, 1 M. 151.

97. But under R. S. 1846 (p. 389, § 15), which required that summons should be served "by reading the same to defendant, and (if required by him) delivering a copy thereof," a return in these words, "Personally served true copies of the within by reading," properly dated and signed, was held sufficient: *Shaw v. Moser*, 3 M. 71.

98. The following return of service of a justice's summons is *prima facie* sufficient to give the justice jurisdiction: "I hereby certify that I have personally served the within summons on the within named defendant, by reading the same and by giving a copy, on the 5th day of August, 1874:" *Merrick v. Mayhue*, 40 M. 196.

99. A justice acquires no jurisdiction over a defendant who does not appear, where the return to the summons only shows that it was served at his last place of residence upon a specified person described as a person of suitable age and discretion, but not as a member of the family, and does not show that it was served in the presence of some one of the family: *Laidlaw v. Morrow*, 44 M. 547.

100. Strict grammatical rules of construction are not to be applied in determining the

fair import and meaning of a constable's return of a summons: *Shaw v. Moser*, 3 M. 71.

(b) Warrant.

101. The affidavit required by H. S. § 6834 for a justice's warrant of arrest under § 6833 must set forth facts and circumstances within the knowledge of the affiant, and not mere conclusions of law; and the facts must be such as in law tend to make out the cause of complaint: *Brown v. Kelley*, 20 M. 27.

102. The constitutional prohibition against the issue of any warrant for arrest "without probable cause supported by oath or affirmation" makes it needful to set forth in the affidavit for the warrant the facts which support the belief that probable cause exists: *DeLong v. Briggs*, 47 M. 624.

103. A showing under oath of probable cause is required to justify the issue of a warrant for arrest for trespass: *Meddaugh v. Williams*, 48 M. 172.

104. A justice's warrant for arrest for trespass cannot issue on an affidavit which sets forth merely that affiant "has, as he has good reason to believe, a just cause of action against [defendant, etc.], against whom he applies for process by warrant for trespass committed by said [defendant] upon lands owned by this deponent, said lands being," etc.: *DeLong v. Briggs*, 47 M. 624; *Maxwell v. Deens*, 46 M. 85; *Meddaugh v. Williams*, 48 M. 172.

105. Where suit is begun before a justice of the peace for the wrongful conversion of goods belonging to the plaintiffs, authority to make an affidavit for a civil warrant is presumed if the affidavit is made by one of two plaintiffs who were co-tenants of the property converted: *Deitz v. Groesbeck*, 32 M. 308.

106. An affidavit showing that defendant has taken the property of the plaintiffs from the possession of their bailee and converted it to his own use is sufficient to authorize a justice to issue a civil warrant; the affidavit need not negative any possible defence, *e. g.*, the bailee's consent, if that would be a defence: *Ibid*.

107. Giving bail on arrest upon warrant, and an adjournment obtained before pleading by the party arrested, do not waive the right of the party to object to the proceedings on which the arrest was founded: *Brown v. Kelley*, 20 M. 27.

108. The fact that an affidavit for the arrest of a trespasser on land is defective does not affect the issue on the merits: *Maxwell v. Deens*, 46 M. 85.

(c) *Appearance.*

1. In general.

109.*A justice must wait an hour for defendant to appear in any case where H. S. § 6938 allows plaintiff that time: *Bossence v. Jones*, 46 M. 492; *Noyes v. Hillier*, 65 M. 636 (April 28, '87).

110. The justice's failure to wait an hour for defendant is at most error, and is not such a jurisdictional defect as is open to collateral attack: *Smith v. Brown*, 34 M. 455.

111. A justice acquires jurisdiction when proper service is made or defendant appears. But the fact of actual notice without any appearance will not give it, and is no reason for refusing or dismissing a *certiorari* to bring up the proceedings: *Vliet v. Westenhaver*, 42 M. 593.

112. Plaintiff's failure to appear on the return day of the summons and within an hour after the time fixed therein works a discontinuance: *Redman v. White*, 25 M. 523; *Mudge v. Yaples*, 58 M. 307.

113. The failure of the plaintiff to appear within an hour of the time to which a cause in justice's court has been adjourned for the completion of the trial operates, under H. S. § 6938, as a discontinuance, and deprives the justice of all jurisdiction thereafter to render any judgment against the defendant or any judgment whatever, except that of nonsuit, and for costs: *Brady v. Taber*, 29 M. 199; *Post v. Harper*, 61 M. 434.

114. A defendant who does not appear in justice's court waives nothing; for plaintiff must in all cases prove his cause of action as upon appearance: *Gilbert v. Hanford*, 18 M. 40. S. P., *Barber v. Taylor*, 1 M. 352.

115. A party who does not appear in a suit before a justice waives nothing, but may raise the objection upon appeal or *certiorari*: *Campau v. Fairbanks*, 1 M. 152.

116. A defendant may confer jurisdiction upon the court by a voluntary appearance after an irregular or void service upon him: *Dailey v. Kennedy*, 64 M. 208.

117. An appearance for the purpose of objecting to irregularities does not waive them, but if it is for some other purpose, as for obtaining a continuance, it is a waiver, and no objection can afterwards be taken to prior defects even though the motion for which the appearance was made was denied: *Lane v. Leech*, 44 M. 163.

118. A special appearance for the sole purpose of making an objection is not a submis-

sion to jurisdiction: *McLean v. Isbell*, 44 M. 129.

119. A general appearance before a justice cannot be considered a submission to the jurisdiction in attachment when taken in connection with defendant's motion to dismiss the writ for want of proper service: *Michels v. Stork*, 44 M. 2.

120. Special appearance in a justice's court for the sole purpose of moving to quash a writ gives no right to thereafter serve the attorney with notice of an amendment of the constable's return: *Bushey v. Raths*, 45 M. 181.

121. Where the docket shows that defendant appeared for the purpose of objecting to the jurisdiction, and that the justice proceeded to a trial on the merits, that is equivalent to a decision of the motion: *Wright v. Russell*, 19 M. 346.

122. A justice before whom a suit was begun fell sick and directed it to be tried before another justice who had jurisdiction over the subject-matter. Held, that as the parties appeared on the adjourned day and tried the case on the merits without objection, they waived all questions of regularity and the judgment was binding: *Smith v. St. Joseph Circuit Judge*, 46 M. 338.

2. Attorney's authority.

123. Where the attorney appearing for plaintiff on the return day failed to prove his authority when requested by defendant, the action was defeated. The demand is not mere matter of form, but a right conferred by statute: *Spier v. M'Queen*, 1 M. 252.

124. The requirement of H. S. § 6870 that an attorney shall prove his authority in all cases where the opposite party does not appear is peremptory, and failure to make such proof is not cured by H. S. § 7046: *Scofield v. Cahoon*, 31 M. 206.

125. The fact that plaintiff's attorney did not prove his authority is ground for reversing a justice's judgment for plaintiff, if neither party appeared, and the objection may be taken by special appeal: *Woodbridge v. Robinson*, 49 M. 228.

126. The right to object to an appearance as attorney in justice's court for want of authority to do so is not waived by having demanded a plea before the question of adjournment was considered: *Westbrook v. Blood*, 50 M. 443.

127. A justice's attachment was not personally served, nor did defendant appear; on the return day plaintiff appeared by attorney,

and the justice, as required by H. S. § 6848, adjourned the case for thirty days. *Held*, that it was of no importance how plaintiff appeared on the return day, and as the docket showed that his appearance on the adjourned day was regular, a judgment in his favor cannot be objected to on the ground that his attorney did not prove his authority as required by H. S. § 6870: *Churchill v. Goldsmith*, 64 M. 250.

128. A justice's action in passing upon an attorney's authority to appear where the opposite party is absent is judicial, and he is not personally liable for not requiring a showing under oath: *Morton v. Crane*, 89 M. 526.

129. The judgment cannot be attacked collaterally for failure to prove an attorney's authority: *Reed v. Gage*, 88 M. 179.

As to what constitutes authority and when authority is collaterally presumed, see ATTORNEYS, §§ 9-16.

(d) Pleadings.

1. In general.

130. Technicality and form are neither expected nor required in the proceedings of justice's courts: *Kinyon v. Fowler*, 10 M. 16.

131. The judicial proceedings of justices should always be reviewed with some degree of liberality, and their judgments should never be set aside, or reversed, for defects in mere matters of form, where it sufficiently appears that the proceedings are substantially correct: *Howard v. People*, 8 M. 207.

132. The proceedings of justices should be liberally viewed with respect to regularity and form: *Wight v. Warner*, 1 D. 884.

133. The court will overlook matters of form in proceedings before justices, and regard them according to the merits: *People v. Foote*, 1 D. 103.

134. Formal defects in the proceedings in justices' courts will be overlooked if no objection is made to them until evidence is offered: *Holbrook v. Cooper*, 44 M. 873.

135. The pleadings should be viewed with liberality, technicalities discountenanced, and substance instead of form required: *Hurtford v. Holmes*, 3 M. 460; *Cicotte v. Morse*, 8 M. 424; *Comstock v. Howd*, 15 M. 287; *Wilcox v. Toledo & A. A. R. Co.*, 43 M. 584; *Snyder v. Winsor*, 44 M. 140; *First National Bank v. Carson*, 60 M. 432; *Whittle v. Bailes*, 65 M. 640 (April 28, '87); *Nugent v. Teachout*, 67 M. 571 (Nov. 10, '87).

136. Where the pleadings are oral, only matters of substance are regarded, and judgment

should not be reversed for objections not made at the trial: *Smith v. Dodge*, 87 M. 354.

137. Special pleading is not required; it is sufficient that plaintiff set forth his cause of action, and defendant his defence, to entitle the cause to be heard upon its merits: *Bancroft v. Peters*, 4 M. 619.

138. Though the rules of pleading in justices' courts are more liberal than at the circuit, yet the nature of the claim of the parties litigant must be stated so as to show a cause of action, and with sufficient certainty to prevent surprise of the other party as to what he will be called upon to meet with his proofs; and the notice of recoupment comes within this rule: *Watkins v. Ford*, 69 M. 357 (April 18, '88).

139. Oral pleadings in replevin suits are admissible: *Smith v. Dodge*, 87 M. 354.

2. The declaration.

140. Where a party declares in writing the declaration must be conformed in substance to the rules of the circuit courts (H. S. § 6875): *Benalleck v. People*, 81 M. 200.

141. The declaration if in writing should be signed by some one: *Ibid*.

142. Whenever the declaration in a suit in justice's court contains a substantial statement of a cause of action it must be held sufficient. Substance is required, not form: *Barber v. Taylor*, 1 M. 852.

143. Declarations in justices' courts are to be liberally construed: *Fletcher v. Bradford*, 45 M. 349.

144. And defects will be waived by defendant if he pleads issuably and goes to trial on the merits: *Hurtford v. Holmes*, 8 M. 460.

145. Where a declaration in justice's court is good in substance, and defendant is present and pleads to the merits, he waives any objection on the ground of its being too general: *Whelpley v. Nash*, 46 M. 25.

146. Pleading to the merits and going to trial precludes the defendant from objecting to evidence on the ground that the declaration was not specific enough to warrant it, if it sufficiently states a cause of action and he was not misled: *Chancey v. Skeels*, 43 M. 847.

147. Where a declaration, though informal, fairly apprises the defendant of the claim made against him, it will be held sufficient if not demurred to: *Wilcox v. Toledo & A. A. R. Co.*, 43 M. 584.

148. Suit on a conditional promise to pay money to the order of a railroad company. The promise was in writing, and was filed

with the justice as the sole cause of action. Upon it was indorsed the name of a person who added to his name the word "assignee." The defendant pleaded the general issue and went to trial. It was shown on the trial that the payee in the promise had been put in bankruptcy, and the indorser of the paper was assignee in bankruptcy thereof. *Held*, that the objection that the plaintiff did not by its declaration aver its right to recover as assignee would not be sustained on the final submission of the case: *Ibid*.

149. A declaration that "defendant and divers other persons, desiring to celebrate the 4th day of July, 1865, and also on that day to serve a free dinner to the soldiers and their families of G. county, and also desiring to raise a sum of money for the said purpose, did designate the said plaintiff as a proper person to raise such sum of money by subscription as would be necessary to defray the expenses of said celebration," etc., and that "the said defendant for the carrying out of said purpose became indebted to the said plaintiff in the sum of \$10," referring to the subscription on file, *held* sufficient: *Comstock v. Howd*, 15 M. 237.

150. A justice's return set forth that "the plaintiff declared verbally against said defendants on common counts in *assumpsit*, and also on breach of a written contract, now on file in court, in all for \$300 or under." *Held* a sufficient declaration to warrant the admission of the contract in evidence: *Bradshaw v. McLoughlin*, 39 M. 480.

151. Plaintiff in a justice's court declared on the common counts, and filed, as specifying the exact nature of his demand, an instrument which in itself constituted a contract sufficient to sustain an action and on which the transferee could sue. It was in terms payable to bearer, but bore the indorsement "without recourse" signed by the payee. It was understood by both parties as the substance of the declaration, and it fairly imported that the plaintiff was the transferee. There was no demurrer for uncertainty. *Held*, that under the liberal rules for construing pleadings in a justice's court there was enough to entitle plaintiff to show that he was the lawful transferee and to put the instrument itself in evidence: *Soper v. Mills*, 50 M. 75.

152. Where, in a declaration in justice's court, a special count for a failure to accept certain barrels contracted for was followed by "one other count for the sale of said barrels, and delivery of part, and refusal of defendant to receive same as agreed upon; also the common counts," *held*, that this could hardly be

called a special count, but was good as to the common counts: *Hinman v. Eakins*, 26 M. 80.

153. Where a plaintiff in justice's court declared orally on "all the common counts" in *assumpsit*, and filed a bill of particulars claiming the balance of the purchase price of land sold to defendant, *held* that, while the common counts as used in our practice do not usually include a count for real property sold and conveyed, yet the bill of particulars sufficiently apprised defendant of plaintiff's claim and rendered the pleading sufficient: *Nugent v. Teachout*, 67 M. 571 (Nov. 10, '87).

154. Where the plaintiff exhibited a promissory note and stated that he declared against the defendant as indorser, without making any averment or statement as to the presentation of the note for payment, and notice of non-payment to the defendant, the declaration was *held* bad in substance, and judgment thereon for the plaintiff — the defendant not appearing — was reversed: *Barber v. Taylor*, 1 M. 352.

155. A declaration in a justice's court, entered upon his docket, and set out in the record as follows: "Plaintiff declared in trespass to his damage, one hundred dollars for injury to buggy and horse," and to which no objection was taken before the justice, *held* sufficient: *Daniels v. Clegg*, 28 M. 32.

156. A declaration for false imprisonment, averring that plaintiff was "thereby delayed and injured in his business," to wit, at the venue stated, was *held* sufficient to admit, in justice's court, evidence of damage: *Thompson v. Ellsworth*, 39 M. 719.

157. A declaration in a justice's court for breach of warranty must show the nature of the warranty and state the breach: *Smith v. Hobart*, 43 M. 465.

158. A declaration claiming to recover back as damages money which defendant had caused to be extorted from plaintiff by duress of imprisonment on criminal process procured by him for that purpose states a lawful ground of action with sufficient precision, if not demurred to, to be sustained: *Holbrook v. Cooper*, 44 M. 373.

159. A general *ad damnum* clause at the end of a declaration in justice's court will apply to a count for assault and battery, especially if the other counts are invalid; and if there were any defect in making it general it would be within the statute of amendments: *Sheldon v. Sullivan*, 45 M. 324.

160. A declaration in case before a justice for overflowing defendant's land sufficiently sets forth the cause of action in alleging that defendant dammed, or caused to be dammed,

a ditch which plaintiff had used as a matter of right for more than twenty years, and was situated on a road laid out by the commissioners of highways, and that by the obstruction of the ditch the plaintiff had suffered damage as specified: *Enright v. Hartsig*, 46 M. 469.

161. In a declaration in justice's court, an *ad damnum* stating plaintiff's damages at \$100, and his right to have them doubled because of the statutory provision applicable thereto, is sufficient: *Rosevelt v. Hanold*, 65 M. 414 (April 14, '87).

3. Pleas.

162. A party arrested and brought before a justice on a civil warrant has a right to a reasonable time for pleading. If the justice requires him to plead immediately, and he pleads the general issue and the case is then adjourned, he is entitled of right to amend his pleadings and put in any justification he may have on the adjourned day: *Meddaugh v. Williams*, 48 M. 172.

163. No plea in abatement is necessary to destroy the jurisdiction of a justice depending on the sum in controversy, if shown on the trial to be excessive: *Chilson v. Jennison*, 60 M. 235.

164. Whether a plea in abatement to an action of trespass brought before a justice raises a question of title which cannot properly be entertained without the filing of the bond required by H. S. § 6892 is unimportant if the plea is bad in itself: *East v. Cain*, 49 M. 473.

165. The requirement that in cases tried before a justice the plea shall be the general issue in all cases, with notice of any special defence, is mere matter of form, and will not invalidate a special defence pleaded alone: *Eddy v. Manshaun*, 42 M. 532.

166. A plea in a justice's court is sufficient if it fully apprises the plaintiff as to what the defence is: *Ibid.*

167. Suit was brought on a promissory note which was payable one day after date, and had run eight years. The defendant pleaded *non assumpsit* within six years, when he should have pleaded *actio non accrevit* within six years. The error being pointed out, he asked leave to amend, but the justice refused it. *Held*, that the plea as it stood fairly apprised the plaintiff of the defence relied upon, namely, the statute of limitations, and the justice should have allowed the defendant the benefit of it, either with or without the amendment: *Snyder v. Winsor*, 44 M. 140.

168. If a notice given under the general issue fairly apprises plaintiff of the defence

intended to be made it is sufficient: *Whittle v. Bailes*, 65 M. 640 (April 28, '87).

169. A justice enters what he understands to be the substance of a plea in his docket, and if none but a plainly untenable objection has been taken to it, a court of review will presume that it was otherwise sufficient: *Preston v. People*, 45 M. 486.

170. A justice should enter an oral defence on his docket unless it is imperfect in substance, but his failure to do so will not deprive the defendant of his defence. If it is imperfect the defendant should be allowed to amend: *Eddy v. Manshaun*, 42 M. 532.

171. Where defendant "pleaded the general issue, and gave notice of set-off and recoupment," such notice was *held* too general to authorize admission of evidence as to the damages sought to be recouped: *Ritter v. Daniels*, 47 M. 617; *Watkins v. Ford*, 69 M. 357 (April 13, '88).

4. Bills of particulars.

172. It is an abuse of discretion for a justice, acting solely on his own motion, to exclude a defendant's bill of particulars of his claim of set-off merely because it was not filed within the time allowed for that purpose after being demanded by plaintiff, if it was in fact filed before trial, and if there was nothing to show that its reception would prejudice plaintiff: *Boatz v. Berg*, 51 M. 8.

5. Amendment.

173. Amendments to obviate merely technical errors are to be favored: *Snyder v. Winsor*, 44 M. 140.

174. Amendments in matters of form or substance in the furtherance of justice can be allowed at any time before the final submission of the cause; and whether allowed or not, if they were not such as would cause surprise, and, after the evidence is introduced, if the amendment is such as would be allowed as matter of course, the declaration should be treated as amended: *Webster v. Williams*, 69 M. 135 (March 2, '88).

175. After submission of the cause the justice has no authority to make or allow any substantial amendments to the declaration: *Ibid.*

176. Defendants arrested on a warrant issued upon an affidavit fatally defective were required to plead immediately and did so. On the adjourned day they asked leave to amend by giving notice of justification under an execution. The justice refused leave unless they

would consent to an adjournment to accommodate the plaintiff, which they declined to do. *Held*, that under the circumstances they should have been permitted to amend without conditions: *Meddaugh v. Williams*, 48 M. 172.

177. After judgment in a justice's court there is no implied authority in the attorney to receive service in subsequent proceedings for amendment: *Clark v. McGregor*, 55 M. 412.

178. H. S. § 6872, permitting a suit in justice's court to be instituted in the firm name, amendable by inserting the partners' names before the pleadings are closed, does not apply where there is no partnership in fact: *Stirling v. Heintzman*, 42 M. 449.

(e) *Payment into court.*

179. A defendant may pay money into a justice's court before or after filing plea, without any rule or order for the purpose, and with the same effect upon the rights of parties as when money is paid into a court of record under the practice there prevailing: *Phelps v. Town*, 14 M. 374.

180. If such payment is after plea, it *seems* that a motion for leave should be made: *Ibid*.

As to application of payments upon judgments, see *infra*, §§ 806-809.

IV. TRIAL.

(a) *Adjournment.*

181. A justice of the peace cannot, upon a service made on the return day of an attachment, proceed at once, upon such return day, to a trial of the cause: *Noyes v. Hillier*, 65 M. 636 (April 28, '87).

182. The three months in which, under H. S. § 6899, postponements may be had, date from the return day of a writ of replevin: *Hatch v. Christmas*, 68 M. 84 (Jan. 5, '88).

183. A justice of the peace has no authority, except under H. S. § 6903, which only allows an adjournment not exceeding six days, to adjourn a cause against defendant's objection without a showing under oath (H. S. § 6899); and such adjournment discontinues the suit: *Scullen v. George*, 65 M. 215 (Feb. 15, '87).

184. A justice loses jurisdiction of the subject-matter by adjourning the suit on his own motion where all the parties live outside the county and there are joint defendants, only part of whom have been personally served, and none of whom have appeared (H. S. § 6903): *Hall v. Shank*, 57 M. 36.

185. An adjournment of a cause in a justice's court for more than four days after the trial is completed, for the purpose of rendering judgment, deprives the justice of jurisdiction: *Brady v. Taber*, 29 M. 199.

186. Where a suit in justice's court is continued by consent of parties, without pleading, the case is regularly in court on the adjourned day: *Patridge v. Lott*, 15 M. 251.

187. It is no objection to the judgment of a justice that he had adjourned the cause upon the written stipulation of counsel, without the presence of the parties: *Parmalee v. Loomis*, 24 M. 242.

188. On the adjourned day of a cause, the absence of the justice for a few minutes more than an hour after the time to which the cause had been adjourned, for the purpose of holding a coroner's inquest, will not operate as a discontinuance of the cause: *Stadler v. Moors*, 9 M. 264.

189. An adjournment by a justice, on his own motion, in the absence and without the consent of the defendant, at any other time than on the return day of the writ, is a discontinuance of the cause: *Ibid*.

190. Where, on the adjourned day of a cause, a justice was absent half an hour over time in the performance of official duties not pertaining to his judicial office, and on his return, upon defendant's refusal to appear, adjourned the cause in his absence and gave him notice of the adjournment, and on the next adjourned day gave judgment against him in his absence, the judgment was *held* void: *Roberts v. Hathaway*, 42 M. 592.

191. Where, on special appeal, a justice's return shows that he had adjourned the case, but does not show that he had done so without proper application and evidence, it is presumed that the adjournment was proper: *Deitz v. Groesbeck*, 32 M. 303.

192. A defendant who has requested, or at least consented, to an adjournment of a suit in a justice's court on account of the sickness of the justice, cannot complain that the adjournment was on the justice's own motion, and, being for more than six days, wrought a discontinuance depriving the justice of jurisdiction to proceed further with the cause: *Patterson v. McRea*, 29 M. 258.

193. A defendant in an attachment suit before a justice asked for its adjournment to a specified day, but the justice refused and adjourned it instead to the hour fixed for the hearing of an application for a dissolution of the attachment before a circuit court commissioner in a remote township; though the defendant showed that the presence of himself

and of two witnesses was necessary at both places on the adjourned day, the justice refused a continuance asked for by defendant's attorney; *held*, that as the justice's refusal to adjourn to the day specified occasioned the necessity for a continuance, it was a valid reason for asking the continuance, and a refusal to continue, knowing why the continuance was asked, was an abuse of whatever discretion might belong to the justice in the matter: *Mercer v. Lowell National Bank*, 29 M. 248.

194. It is error for a justice to refuse an adjournment on a return day of summons upon a sworn showing that defendant is too unwell to attend to business or leave his house: *Locke v. Leonard Silk Co.*, 87 M. 479.

195. The showing for a continuance need not be as complete upon the return day of summons as would be required later in the case: *Ibid.*

196. It is not a legal cause for the adjournment of proceedings on the return day that the party asking it wants the assistance of counsel: *Warner v. Comstock*, 55 M. 615.

197. Defendant's refusal to submit to cross-examination upon his affidavit for continuance is sufficient reason for denying the continuance: *Boatz v. Berg*, 51 M. 9.

198. The objection that the case had been illegally adjourned is unavailable if not taken before the trial: *Erie Preserving Co. v. Witherspoon*, 49 M. 877.

199. Whether an adjournment on plaintiff's motion, after defendant, under his notice of set-off, had filed an account of said set-off, verified by affidavit as provided by H. S. § 7525, operated as a waiver of the service of the account, affidavit, etc., *quere*, court being equally divided: *Lamb v. McGowan*, 66 M. 615 (July 7, '87).

(b) Jury.

200. Where a party has failed to demand a jury at the joining of issue and before adjournment, it is nevertheless competent for the justice to order one to be called on his demand on the adjourned day. The failure of the party to demand a jury within the time allowed by law is only a waiver of the right; but the justice possesses the same power to order one afterwards as is possessed by the circuit court: *Van Sickle v. Kellogg*, 19 M. 49.

201. If a justice of the peace has any doubt, or is not able to certify in positive terms, that no jury was demanded at the time provided for by the statute, he should entertain the demand and allow a jury: *Pontiac & L. P. R. Co. v. Hopkinson*, 69 M. 10 (March 2, '88).

202. If a jury is demanded at the time of joining issue and before adjournment, the jury fee may be paid at the day to which the cause stands adjourned at any time before the trial is entered upon by the swearing of witnesses: *Ibid.*

203. One who demands a jury in justice's court, and pays their fees, has no right, if this jury disagrees, to insist upon trial by another without advancing an additional jury fee: *McGraw v. Sturgeon*, 29 M. 426; *Roberts v. Tremayne*, 61 M. 264.

204. H. S. § 6935, in so far as it limits the time for the selection and summoning of a new jury in justice's court to forty-eight hours, unless the parties agree to a shorter time, applies only to cases where such jury has been properly demanded and the statutory fees paid: *Roberts v. Tremayne*, 61 M. 264.

205. A justice's jury was discharged upon failure to agree, and another trial was set for the next day, with notice to defendant, who did not appear at the time set, made no motion for a continuance, and did not request or pay for a second jury. *Held*, that the justice after waiting an hour for defendant could try the case in his absence and render judgment: *Ibid.*

206. Defendant's absence from further proceedings in justice's court after demanding a jury and paying the jury fee does not amount to a waiver of the jury, and the justice cannot proceed to try the case alone: *Boatz v. Berg*, 51 M. 9.

207. A justice's juries may be summoned from the county at large: *Faulks v. People*, 39 M. 200.

208. A justice of the peace has no right to go alone into the jury room to advise the jury, even at their request, unless the parties or their counsel consent: *Galloway v. Corbitt*, 53 M. 460.

209. But where the justice, at the request of the jury and with the consent of the parties, went to the jury room with the latter to answer a question the jury wished to ask him as to their right to find for an amount less than the face of the note sued on, *held* no error: *Smoke v. Jones*, 35 M. 409.

210. If the parties to a suit in justice's court allow the justice to participate with the jury's consultations in the jury room, they constitute a tribunal of their own to determine what verdict shall be rendered, and after the rendition of the same, all having been done by consent, the justice may render judgment upon it, and if the verdict was wrong the parties are remediless by *certiorari*: *Snyder v. Wilson*, 65 M. 336 (April 14, '87).

211. Jury fees are not included in the fixed sum to which the prevailing party's costs are limited by H. S. § 6940: *Overpack v. Ruggles*, 27 M. 65; *McGraw v. Sturgeon*, 29 M. 426.

(c) *Evidence.*

As to testimony of parties in justices' courts, see EVIDENCE, § 1707.

212. A cause of action must be as fully proved in a justice's court as in any other: *Cicotte v. Morse*, 8 M. 424.

213. By H. S. §§ 6875, 6928, if the written instrument declared on or set off before a justice is filed at the time of declaring or pleading, or giving notice of set-off, its execution must be denied on oath at the time of such filing, and not afterwards: *Fish v. Hale*, 4 M. 506.

214. Such written instrument may be filed previous to declaring, etc., and if it is on file at that time it will be sufficient: *Smoke v. Jones*, 35 M. 409.

And further, as to denial of execution of written instruments, or admission by failure to deny, see BILLS AND NOTES, §§ 274-298.

215. In replevin brought by one claiming a special lien on the property for freight, defendant, under the general issue, without notice, may give evidence to reduce the lien by showing injury to the property while in transit: *Bancroft v. Peters*, 4 M. 619.

216. A declaration in trespass for breaking and entering plaintiff's close without asserting and describing a title in plaintiff in the lands is not such a claim of title as, under H. S. § 6894, is admitted by the plea of the general issue. The land is plaintiff's close if he had peaceable possession, even though he had no title; and it was not plaintiff's close if defendant was in peaceable possession: *Vandoozer v. Dayton*, 45 M. 247.

217. Under such a declaration plaintiff relies upon his possession, and defendant may disprove it under the general issue: *Ibid.*

218. But if plaintiff claims and describes a title in himself in the declaration, it seems that defendant, under the general issue merely, will not be allowed to dispute it, or claim any right or possession in himself inconsistent therewith: *Ibid.*

219. Tenancy of any sort is a species of title; and where a defendant, in an action brought before a justice and involving title, has not given notice that title will come in question, he cannot rely upon his tenancy as a defence: *Ibid.*

220. In an action of trover, brought before a justice for the conversion of a quantity of

hoops, it was held proper to show, under the plea of the general issue, that they were cut from lands belonging to a certain estate, and to put in evidence the government patent to the former owner and a power of attorney from his heirs, including plaintiff, empowering the defendant to sell and convey any of the property belonging to them. The introduction of such testimony would not be litigating a claim of title, and the evidence would be admissible for the purpose of identifying the property in suit: *Hart v. Hart*, 48 M. 175.

221. It is discretionary with a justice to allow proof to be made after the argument as to the time when the summons was delivered for service, provided such proof does not prejudice the opposite party: *Gray v. Willcox*, 56 M. 58.

222. A justice trying a case without a jury does not clearly err in striking out evidence as immaterial if he returns the facts truly for review: *Mann v. Tyler*, 56 M. 564.

(d) *Verdict.*

223. Where an issue formed upon a plea of not guilty in replevin was tried by a jury, who returned a verdict as follows: "This jury find for the plaintiff," held that, although not a formal verdict in replevin, yet it sufficiently indicated for which party the jury had found the issue, and that it was the duty of the justice to enter the verdict in the proper form, according to the substantial finding, and to render judgment thereon; and he may be compelled by *mandamus* to do so: *Lamberton v. Foote*, 1 D. 102.

224. Unless the facts in a replevin suit before a justice require a special finding, a verdict that "this jury finds for the plaintiff" is sufficient, and judgment must be entered on it: *Smith v. Dodge*, 37 M. 354.

225. Trespass was brought in justice's court on three counts, two based on the statute against forcible dispossession and one at common law for damage to plaintiff's goods. The jury's verdict was in these words: "Damages on goods twenty-seven dollars and seventy-five cents. Actual exemplary or personal damages twenty dollars, trebled sixty dollars." Held, that this would sustain judgment; the assessment of damages was sufficiently specific and the actual damages sufficiently indicated: *Wilson v. McCrillies*, 50 M. 347.

226. A justice must construe and apply the verdict of a jury reasonably in the light of the proceedings: *Ibid.*

227. The verdict of a jury in justice's court is equivalent to judgment and will support

issue of execution: *Gaines v. Betts*, 2 D. 98; *Overall v. Pero*, 7 M. 815.

228. Where the jury have found a verdict the justice cannot award a *venire de novo*, thus in effect granting a new trial of the cause: *Lamberton v. Foote*, 1 D. 102.

229. A jury's verdict in justice's court is conclusive; the justice cannot set it aside nor make it invalid by neglecting to enter judgment on it at once. The law supplies the judgment if not entered, and its subsequent entry in accordance with the verdict is proper: *Alt v. Lalone*, 54 M. 802.

V. JUDGMENT; DOCKET.

As to proof of justice's judgments, see EVIDENCE, §§ 1101-1108, 1112.

(a) *Rendition.*

1. Nature; form.

230. It is a judicial act for a justice of the peace to render judgment, and the performance of it involves the "holding of court." This is forbidden by H. S. § 1591, for statutory holidays, or for the day following where they fall on Sunday, and a judgment so rendered is void: *Hemmens v. Bentley*, 32 M. 89.

231. Where a justice, when a cause is submitted, informs the parties he shall take time to decide the cause, but does not say how much, he is not obliged to wait four days: *Draper v. Tooker*, 16 M. 74.

232. When the justice does not fix the time within the four days allowed by the statute upon which to render his judgment, the parties are bound to take notice when the judgment is rendered: *Ibid.*

233. If a justice determines, when a cause is submitted to him, to decide it on some particular day within the four days allowed by statute, this is in legal effect a continuance of the cause until that day, and should be so announced to the parties and so entered upon his docket: *Ibid.*

234. A judgment not rendered within four days after the cause has been submitted to the justice is void: *Harrison v. Sager*, 27 M. 476; *Brady v. Tuber*, 29 M. 199; *Hall v. Howard*, 39 M. 219; *Weaver v. Lammon*, 62 M. 366.

235. If the fourth day is Sunday, judgment must be rendered before that day: *Harrison v. Sager*, 27 M. 476.

236. Where a justice's return on appeal states that the cause was tried by him without a jury on the 12th, and that he rendered judgment on the 17th, it will not be presumed

in support of the judgment, in the absence of any showing that such is the fact, that the cause was not finally submitted to him until the 13th: *Ibid.*

237. A justice cannot render judgment on a bill or note against part of the defendants: *Berend v. Avery*, 39 M. 182.

238. Judgment for a joint conversion cannot be entered against a defendant who had not been served with process: *McLean v. Isbell*, 44 M. 129.

2. Upon what based.

239. A justice should require distinct lawful evidence that summons has been served personally, before rendering judgment on its return against a defendant who has not appeared: *Smalley v. Lighthall*, 87 M. 848.

240. If a justice, whether properly or not, has erased his docket entry of the appearance of a defendant, he ought not to proceed in the case without giving notice of his purpose to the defendant, or the attorney who had assumed to appear for him: *King v. McKenzie*, 51 M. 461.

241. A judgment rendered in plaintiff's favor before the return hour of the summons, without defendant's consent or appearance, or when plaintiff has failed to appear in one hour thereafter, is void: *Mudge v. Yaples*, 58 M. 307.

242. Where defendants sued in their firm name in justice's court pleaded in such name, and were allowed to recover upon a set-off, a judgment in their favor on *certiorari* was affirmed by a divided court: *Lamb v. McGowan*, 66 M. 615 (July 7, '87).

3. Confession of judgment.

243. A justice's authority to render judgment on confession is derived solely from the statute, and the docket entries of the proceedings must show that the law has been complied with: *Beach v. Botsford*, 1 D. 199; *Clark v. Holmes*, 1 D. 390; *Spear v. Carter*, 1 M. 19; *Shadbolt v. Bronson*, 1 M. 85.

244. A confession of judgment before a justice is void unless in accordance with the statute authorizing it: *Clark v. Holmes*, 1 D. 390; *Beach v. Botsford*, 1 D. 199; *Spear v. Carter*, 1 M. 19; *Wilson v. Davis*, 1 M. 156; *Dodge v. Bird*, 19 M. 518; *Wilson v. Davis*, 1 M. 156; *Austin v. Grant*, 1 M. 490.

245. A justice can render judgment on confession of the party only in those actions which he has jurisdiction to try: *Spear v. Carter*, 1 M. 19.

246. Under R. S. 1838, p. 389, § 2, a judg-

ment by confession was held void where it did not appear to be "signed by the person making the same, in the presence of the justice and of one or more competent witnesses." The statute was construed to require the witnesses to subscribe their names as such: *Beach v. Botsford*, 1 D. 199; *Austin v. Grant*, 1 M. 490.

247. A judgment entered on confession without process is void if the paper treated as a confession is a mere due-bill: *Dodge v. Bird*, 19 M. 518.

248. To give an oral admission of indebtedness the effect of a *cognovit*, in a case where a money demand is in suit, it must not only admit that the plaintiff has a demand, but it must either definitely fix the amount or furnish the means of fixing it by some process of mere calculation. Otherwise no judgment is confessed and the case requires evidence: *Morrison v. Riker*, 26 M. 385.

249. It is only where the parties appear without process that a written confession signed by the defendant is required by the statute. If the defendant appears after due service of process, and orally admits the cause of action for which the plaintiff declares, this is sufficient to authorize judgment to be entered against him: *Crouse v. Derbyshire*, 10 M. 479.

250. Judgment against two, on confession of one, after return day of summons, and without continuance, is void: *Clark v. Holmes*, 1 D. 390.

251. A judgment was rendered by a justice in these words, after the title of the cause: "Judgment by written confession of the above named defendants, in favor of the above named plaintiff, for eighty-eight dollars and eighteen cents damages and costs of suit." Held, that the judgment did not show, and was not *prima facie* evidence, that the justice had jurisdiction of either the persons of the defendants, or of the subject-matter of the suit, and that it was therefore void: *Spear v. Carter*, 1 M. 19.

252. A judgment by confession without process is void, unless the confession is in writing signed by the defendant in the presence of the justice: *Wilson v. Davis*, 1 M. 156.

253. Where no suit has been commenced by process, judgment can only be taken in justice's court upon confession signed in the justice's presence: *Cox v. Crippen*, 18 M. 502.

254. Where parties appeared before a justice, and confessed judgment in favor of another, on a demand arising upon contract, for a sum specified, and authorized judgment to be entered thereupon, it was held a substantial acknowledgment of their indebtedness, and

sufficient under this statute: *Kinyon v. Fowler*, 10 M. 16.

255. Where two persons thus confessed judgment, and the judgment entry recited that "the parties appeared," it was held that this phrase purports that the creditor, as well as the debtors, was present and participated in the proceedings: *Ibid.*

256. A justice's judgment rendered on a confession in writing, signed by the defendant in due form, is valid though the justice's docket does not affirmatively show that no process was issued. A confession that is sufficient without process, and where the defendant appears voluntarily, is certainly good with it: *Hollister v. Giddings*, 24 M. 501.

257. Where a judgment by confession in an attachment suit is entered by the justice in a different docket from that in which the attachment suit is entered, and the docket entries are connected in the two dockets as the proceedings in the attachment suit, they are sufficient to establish that the judgment entered was one in the attachment suit: *Hahn v. Seifert*, 64 M. 647 (Feb. 8, '87).

258. Whether confession by the president of a corporation without a showing of authority from the directors gives jurisdiction to render judgment, *quere*: *Jones v. Avery*, 50 M. 326.

4. Entry; docket.

259. The statute requiring a justice of the peace to keep a docket and to enter therein the judgments rendered by him is directory only, and the entry when made is not the judgment itself, but only the evidence of it: *Hickey v. Hinsdale*, 8 M. 267.

260. A justice's judgment which was rendered upon the verdict, and entered by the justice in his minutes, is not void because it was not forthwith transcribed upon his docket: *Saunders v. Tioga Manuf. Co.*, 27 M. 520.

261. Where a justice had entered judgment in his minutes, leaving a blank for the costs, which were not entered for four days afterward, it was held that the judgment was valid as to the damages; and as to costs, that on good cause shown or by consent, and by making due announcement on the day of the trial, the justice might hold the court open even for four days to hear evidence as to the different items of costs, the determination of which would relate back and take effect as of the date of the judgment: *Ibid.*

262. The entry of judgment should be officially signed by the justice: *Howard v. People*, 3 M. 207.

263. Where the entry of a judgment on a

justice's docket is followed immediately by a stay of execution in the same case — each being dated separately, but the dates being the same — and it is inferable from the docket that both entries were made at the same time as one transaction, and the official signature of the justice is appended at the foot of the entry of the stay, the judgment is not void for want of signature, nor the stay for want of attestation: *Hollister v. Giddings*, 24 M. 501.

264. Under the proper entitling of a cause with the names of the parties, an award of judgment was entered as follows: "It is therefore considered that the said P. do recover of the said D. the sum," etc. Debt being brought on this judgment it was held that the entry did not show with sufficient certainty in whose favor and against whom the judgment was rendered, and that therefore a transcript thereof offered in evidence was inadmissible: *Rood v. Bloomfield School District*, 1 D. 502.

265. Held, also, that parol evidence was not admissible to prove that the letters P. and D. in the docket entry meant plaintiff and defendant: *Ibid.*

266. A justice's judgment, though not technically a record, has all the effect of a record, and the docket entry thereof should be as explicit and certain as to all matters of substance as a judgment in a court of record: *Ibid.*; *Howard v. People*, 3 M. 207.

267. The docket entry of a justice showed that, on default of appearance by the defendants in a suit against the maker and indorser of a note, he proceeded to hear the cause on a return of service of summons on the within named defendant, and entered judgment as follows: "And after considering the evidence judgment is this day rendered for \$300 damages and \$3 costs." Held, that this judgment was indefinite and void on its face: *Sherman v. Palmer*, 37 M. 509.

268. The docket of a justice stated that a cause was called and judgment rendered "on the return of process." Held to mean on the return day of process, and not the time of its actual return: *Aldrich v. Maitland*, 4 M. 205.

269. A statement in the docket that judgment was rendered in favor of plaintiff — there being only one defendant — sufficiently shows that judgment was rendered against defendant: *Ibid.*

270. The judgment to be rendered in justice's court on a joint debt when only one defendant is served is prescribed by statute, and the use of the word "defendant" instead of "defendants" in entering judgment is a mere clerical mispision, and leaves the judgment, if

not taken up for review, valid as against the defendant who was served: *Zimmer v. Davis*, 35 M. 39; *Holcomb v. Tift*, 54 M. 647.

271. The record of the court of a justice of the peace consists of the entries required by the statute to be made upon his docket: *Goodrich v. Burdick*, 26 M. 39.

272. The docket of a justice is a public record, at all times open for proper entries: *Cox v. Crippen*, 13 M. 502.

273. A justice's docket record must disclose jurisdiction and show everything which the statute requires to be entered upon it; but it must also be construed fairly and reasonably, and in view of the fact that the justice is not presumed to be a legal expert. Reasonable certainty, or perhaps "certainty to a common intent," is all that is necessary: *Vroman v. Thompson*, 51 M. 452.

274. The records of proceedings before a justice are only required to be certain to a common intent: *Shaw v. Moser*, 3 M. 71.

275. When a justice's docket entries comply with the statute, the ordinary presumption in favor of the correctness of official action must support the proceedings: *Peck v. Cavell*, 16 M. 9.

276. The justice's docket is entitled to a fair and reasonable interpretation, but it must show by reasonable intendment that the justice had jurisdiction: *Mudge v. Yaples*, 58 M. 307.

277. It is proper that in every case the justice should make his docket show in what manner the parties appear, but he is not expressly required by statute to do so: *Morton v. Crane*, 39 M. 526.

278. The recital on the docket of a justice that parties appeared and pleaded, held conclusive: *Facey v. Fuller*, 13 M. 527.

279. The justice's docket must show affirmatively the day and hour of the appearance of the parties, and if defendant is absent that plaintiff appeared on the return day of the summons, and within one hour after the time fixed therein: *Mudge v. Yaples*, 58 M. 307.

280. Where there has been no appearance on defendant's part the justice's docket must affirmatively show that plaintiff appeared within one hour of the time to which the cause was adjourned: *Post v. Harper*, 61 M. 434.

281. A justice's docket entry reciting the date and return day of the summons, and containing no other date except to repeat at the end of it the date of the return day, and which does not state on what day the parties were called, and the plaintiff appeared and the defendant failed to appear, is not enough to comply with H. S. § 7053, which was not

meant to leave the time of appearance to be referred to the date of the judgment in a case affording room, on the face of the docket, for the two acts on separate days: *Redman v. White*, 25 M. 523.

282. A docket entry which does not show whether the plaintiff appeared on any particular day out of several does not show that he appeared within an hour after the return day of process; and as (H. S. § 6938, clause 2) his failure to appear within that time works a discontinuance, such a docket entry fails to show that the justice was authorized to render the judgment, and is, therefore, not admissible to prove the validity of the judgment: *Ibid*.

283. The docket of a justice of the peace, verified by his own oath, is competent evidence of the facts stated therein, but a docket entry in an attachment suit is not sufficient to prove a valid judgment in the absence of any proof of the affidavit upon which the writ issued and which is essential to the jurisdiction to issue the writ at all: *Goodrich v. Burdick*, 26 M. 39.

284. The objection that the hour to which a case was continued does not appear in a justice's docket is frivolous and properly overruled if it appears that the hour was fixed and that it appeared in the justice's minutes, but had not been transferred to his docket: *Gray v. Willcox*, 56 M. 58.

285. A justice's neglect to record in his docket the place to which a case is adjourned is a clerical irregularity for which judgment cannot be reversed if the defendant is not misled and appears and answers: *Whelpley v. Nash*, 46 M. 25.

286. Where plaintiff declared orally on a note then present on file, and the justice, in entering the substance on his docket, described the note as dated in 1874, when in fact it bore date in 1871, there was no variance; the incorrect date in the docket was substantially corrected by the note itself, and the mistake might have been cured in fact by correcting the entry: *Smoke v. Jones*, 35 M. 409.

287. Oral evidence is inadmissible to vary or explain a justice's docket so as to give him jurisdiction that does not appear on its face: *Mudge v. Yaples*, 58 M. 307.

288. It seems that when a justice's docket shows jurisdiction no proof can be given to contradict its recitals: *Clark v. Holmes*, 1 D. 390.

289. But the want of jurisdiction either over the person or the subject-matter may be shown by evidence, even when it tends to contradict the minutes or docket: *Ibid*.

290. A justice's jurisdiction to proceed as in case of personal service is not established by his docket entry, to the exclusion of proof that service was not personal, when the return does not show that it was; *Smalley v. Lighthall*, 87 M. 348.

291. The docket entry as to the date of a judgment cannot be contradicted by the justice's return to a *certiorari* showing that judgment was really rendered on the day before the date named in the docket: *Weaver v. Lammon*, 63 M. 366.

292. Whether, after the allowance of a writ of *certiorari*, a justice of the peace can, on motion, change the entry on his docket so as to make it show the true date of a return of service of an attachment, or permit an officer who has omitted to date his return to affix the correct date, *quere*: *Nicolls v. Lawrence*, 30 M. 395.

5. Amendment.

293. A justice cannot amend a judgment by substituting another name for that of the defendant, even by consent of the plaintiff and the person whose name is to be substituted: *Foster v. Alden*, 21 M. 507.

294. Where a justice enters judgment as against Peter Mayo in a suit begun by process against Peter Mayhue, it is competent to amend the error by following the summons: *Merrick v. Mayhue*, 40 M. 196.

(b) Validity and effect.

1. Setting aside or vacating.

295. When a justice of the peace has once rendered judgment in a cause he has no power to vacate the same, or set it aside, or to render a new judgment; and if he attempt this, though it be done in obedience to a writ of *mandamus* from the circuit court, the new judgment so attempted to be rendered will be a mere nullity, and the prior judgment will remain in full force: *O'Brien v. Tallman*, 36 M. 13.

2. Collateral attack.

296. A justice's judgment cannot be attacked collaterally for failure to prove the authority of plaintiff's attorney where defendant did not appear: *Reed v. Gage*, 33 M. 179; *Mayhew v. Snell*, 38 M. 182.

297. Or for the justice's failure to wait an hour for defendant to appear: *Smith v. Brown*, 34 M. 455.

298. Or because the summons was served

by a constable, it being in his own favor: *Parmalee v. Loomis*, 24 M. 242.

299. Or for want of a signature to the affidavit for a transcript of the judgment: *Mayhew v. Snell*, 33 M. 182.

300. Or on the ground that the docket does not show that the note, whereon the judgment appears to have been rendered, was negotiable, or to whom it was payable: *Van Kleek v. Eggleston*, 7 M. 511.

301. Where, in an action before a justice on a joint note, summons was returned as served on only one of the makers, the other not being found, and judgment was rendered against this one only, this fact does not go to the jurisdiction of the justice, and is no ground for collaterally attacking the judgment while it remains unreversed, although the error is one for which it might be reversed on *certiorari*: *Allen v. Mills*, 26 M. 123.

302. To review the validity of a justice's judgment on *certiorari* sued out to review the action of a circuit court in denying a motion to vacate a judgment docketed there on a transcript, filed in the circuit, from the justice's judgment, would be to assail the latter collaterally, and it is not allowable: *Mayhew v. Snell*, 33 M. 182.

303. Where a justice's execution is relied on by an officer sued in replevin, plaintiff may show that there was no service of process and that the attorney appeared without authority: *Hunt v. Strew*, 33 M. 85.

304. Rendering judgment for the amount of a mechanic's lien and holding the owner personally liable will not destroy a justice's jurisdiction of a suit for wages; nor is the judgment void or open to collateral attack, but it must stand unless reversed: *Smith v. Pearce*, 52 M. 370.

(c) *Satisfaction; payment; discharge.*

305. In the absence of special instructions a justice of the peace can receive nothing but current money of the United States in satisfaction of a judgment on his docket: *Heald v. Bennett*, 1 D. 513; *Welch v. Frost*, 1 M. 30.

306. A judgment recovered before one justice can be ascertained and applied by another in satisfaction of a counter-claim recovered before him by the other party: *McEwen v. Bigelow*, 40 M. 215.

307. A justice before whom a judgment had been obtained, and to whom the same had been paid pending proceedings in garnishment to reach the avails thereof, applied such payment upon the judgment subsequently rendered by him in garnishment, after the time

for appealing therefrom had expired. *Mandamus* to compel him to pay over the amount to the first judgment creditor was denied: *Griffin v. Potter*, 27 M. 166.

308. Payment by a garnishee defendant upon a particular demand is in the hands of a justice as payment on that demand only, and on no other; and the justice is not liable for the money received to one who holds a judgment against the same garnishee on another demand: *Dane v. Holmes*, 41 M. 661.

309. Money paid to a justice to be applied upon a judgment in garnishment cannot be used to satisfy a different judgment against the same party, even though the time had expired during which the fund could be bound by the proceedings in garnishment: *McDonald v. Lewis*, 42 M. 135.

310. A justice entered across a judgment on his docket that it was paid, stating the day, and signed the entry in his official capacity. Held, that such entry was *prima facie* evidence that the judgment was satisfied, and that this evidence was not rebutted by proof, unaccompanied by any explanatory testimony, of another entry immediately below the former, on the same docket, without date, and signed by the justice in his individual capacity, stating in effect that the judgment had not been paid, according to the import of the former entry: *Beach v. Botsford*, 1 D. 199.

311. The entry of the words "Judgment discharged," written by a justice across the face of a judgment, is no more conclusive than a receipt; it is only *prima facie* evidence of payment and can be shown to be incorrect: *Dane v. Holmes*, 41 M. 661.

312. A justice's docket entry that money paid into court is in satisfaction of a particular judgment cannot make him liable to the judgment creditor for the money, if it was actually meant to be applied upon a different judgment: *McDonald v. Lewis*, 42 M. 135.

(d) *Actions on judgments.*

313. An action of debt lies on a judgment recovered before a justice of the peace immediately on its rendition, notwithstanding execution upon it has been stayed pursuant to the statute: *McDonald v. Butler*, 3 M. 558.

314. A justice's judgment is not necessarily invalidated by an excessive allowance of costs, and such judgment may be sued over again for the damages only: *Whelpley v. Nash*, 46 M. 25.

315. And plaintiff may recover the costs of the second action; he has "good cause" as required by H. S. § 6941: *Ibid.*

316. Where a justice's docket recites that plaintiff declared "orally in *assumpsit* on the common counts and specially in writing," it cannot, in an action on the judgment, be assumed that, in declaring specially, he added a count upon a cause of action not cognizable by the justice, or that, even if he did, the judgment was rendered upon the bad count: *Schlatterer v. Nickodemus*, 50 M. 315.

317. A declaration on a justice's judgment requires no further allegation in regard to jurisdiction than would be required in a suit upon the judgment of a court of record: *Goodsell v. Leonard*, 23 M. 374.

318. A justice's judgment, though joint in form, is not in law a joint obligation binding both defendants alike if only one was served, and it does not merge the debt so as to preclude suing both over again. The one who was not served is not personally bound, and cannot be until he is sued on the original obligation. The judgment, therefore, may be sued as an individual obligation against the one who was served, and the case may be discontinued as to the other: *Holcomb v. Tift*, 54 M. 647.

(e) *Transcripts.*

319. All the proceedings relating to transcripts are statutory, and the statute (H. S. §§ 6947, 6948) must be strictly followed: *Jewett v. Bennett*, 3 M. 198; *O'Brien v. O'Brien*, 42 M. 15; *Doty v. Dexter*, 61 M. 348.

320. The issue and return unsatisfied of a justice's execution is not necessary before taking out a transcript: *Udell v. Kahn*, 31 M. 195.

321. A transcript cannot be made and filed in the circuit court until the time when execution would be issuable by the justice on the judgment. A transcript made before five days after rendition of judgment in a case where execution could not issue earlier is void: *O'Brien v. O'Brien*, 42 M. 15; *Vroman v. Thompson*, 42 M. 145.

322. If the transcript is a correct copy from the docket entries it will be sufficient: *Udell v. Kahn*, 31 M. 195.

323. In making out the transcript the justice corrected the docket entry of the judgment so as to follow the summons, which ran against Peter Mayhue, instead of Peter Mayo, as the judgment entry had it. *Held*, that the transcript was good, there being no question of identity: *Merrick v. Mayhue*, 40 M. 196.

324. The transcript must be officially signed by the justice; his name appearing in the body of the judgment is not sufficient: *Bigelow v. Booth*, 39 M. 622.

325. And it must be certified by him: *Peck v. Cavell*, 16 M. 9.

326. Where a transcript was authenticated by a certificate of the justice in this form: "I hereby certify that the above is a true transcript of the above judgment, and of the subsequent proceedings thereon," the certificate was insufficient to authorize the filing of the transcript and issuing execution thereon: *Jewett v. Bennett*, 3 M. 198.

327. The affidavit required by H. S. § 6947 of insufficiency of goods and chattels need not state the amount due upon the judgment; but it may do so: *Smith v. St. Joseph Circuit Judge*, 46 M. 338.

328. The affiant's signature to the affidavit of insufficiency of goods, etc., is not necessary to its validity, if it is actually sworn to: *Merrick v. Mayhue*, 40 M. 196.

329. An affidavit of the amount due at the time of filing the transcript is necessary to authorize the clerk to enter and docket the judgment: *Peck v. Cavell*, 16 M. 9; *Monaghan v. McKimmie*, 32 M. 40; *Bigelow v. Booth*, 39 M. 622.

330. The affidavit of the amount due is a necessary jurisdictional fact in order to give the clerk any authority to act in the matter: *Smith v. St. Joseph Circuit Judge*, 46 M. 338.

331. Where there has been no substantial delay in preparing and filing the transcript, and the affidavit for the transcript contains a statement of the amount due, the transcript is not void for want of a separate affidavit of the amount due, and an execution issued on the transcript from the circuit is valid: *Udell v. Kahn*, 31 M. 195; *Smith v. St. Joseph Circuit Judge*, 46 M. 338.

332. But where there was a delay of eight days in filing the transcript after the affidavit of insufficiency of goods, etc., was made, it was *held* that a statement therein of the amount due would not obviate the necessity of making a separate affidavit: *Bigelow v. Booth*, 39 M. 622.

333. An affidavit of amount due is good if filed without such delay as would give rise to a presumption that payment had been made since it was sworn to, and it is generally good if filed on the day after it was made: *Smith v. St. Joseph Circuit Judge*, 46 M. 338.

334. The affidavit for a transcript is jurisdictional, and it cannot be made by the administrator of the party in whose favor the judgment was rendered; nor can it be made by the attorney who obtained the judgment, for his authority was revoked by his client's death: *Doty v. Dexter*, 61 M. 348.

335. The omission by the clerk of the cir-

cuit court to enter the transcript in a book will not avoid an execution where there are no intervening interests of third persons; and such entry may be rectified by proper steps so as to relate back to the filing: *Udell v. Kahn*, 31 M. 195.

336. Where the transcript of a justice's judgment filed in the circuit court fails to show, in a case where defendant did not appear, that there was any proper service of process, or whether plaintiff appeared and took judgment before or at the time the writ was returnable, it does not disclose that the justice had jurisdiction to render the judgment, and parol proof cannot supply the defect: *Wedel v. Green*, 70 M. 642 (June 15, '88).

337. A transcript properly certified and docketed renders the judgment a judgment of a court of record from the time of such filing and docketing; thus changing in some degree its nature, and very materially the rights, powers and liabilities of the parties to it: *Jewett v. Bennett*, 3 M. 198.

338. A justice's judgment duly docketed in the circuit court has the same effect as a judgment rendered in that court, and is to be enforced, discharged, cancelled, or affected by the statute of limitations in the same way: *Arnold v. Thompson*, 19 M. 333.

339. While for certain purposes a transcript of a justice's judgment has the effect of a circuit court judgment, it is not "a judgment rendered in a circuit court" within the meaning of the statute permitting garnishment to be based on a judgment so rendered: *Weimeister v. Singer*, 44 M. 406.

LANDLORD AND TENANT.

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I. THE RELATION.

(a) *What constitutes, generally.*

1. A tenancy exists where one has let real estate to another to hold of him as tenant: *Morrill v. Mackman*, 24 M. 279.

2. The usual incidents of a tenancy are possession with right of enjoyment, and rent: *Ibid.*

3. A tenancy does not necessarily imply a right to complete and exclusive possession; it may be created with implied or express reservation of a right to possession on the landlord's part for all purposes not inconsistent with the privileges granted to the tenant: *Ibid.*

4. The privilege granted by deed, and for an annual compensation, to flow lands for an indefinite period creates a tenancy in them: *Ibid.*

5. The contract relation of landlord and tenant cannot impliedly exist unless the person charged as tenant has either accepted possession from the landlord, or done some other act in plain recognition of the relationship whereby he is equitably estopped from denying it: *Lockwood v. Thunder Bay River Boom Co.*, 42 M. 536.

6. An adverse use or holding by the party sought to be charged as tenant is incompatible with the relationship of landlord and tenant: *Ward v. Warner*, 8 M. 508; *Hogsett v. Ellis*, 17 M. 351; *Wilmarth v. Palmer*, 34 M. 347.

7. Where an occupant of land was in possession as tenant merely, it is presumable that he was in as tenant under the party claiming title: *Rayner v. Lee*, 20 M. 384.

8. The fact of A.'s occupancy of B.'s land is *prima facie* evidence that A. is B.'s tenant, which can only be rebutted by showing some fact or circumstance tending to rebut this inference: *Hogsett v. Ellis*, 17 M. 351.

9. An agreement whereby one party lets certain land, for a year, to the other, for a certain sum, and authorizes him to enter and harvest a crop which the former agrees to put in, is a lease and not a mortgage, and gives the lessee title to the crops, so that it cannot be

attached in a proceeding against the lessor: *Stadden v. Hazzard*, 34 M. 76.

10. While a mere agreement for a lease does not create a tenancy or give the other party a right of possession, yet if the latter has possession for the purpose of putting up a building and is to continue in possession as tenant until his rent pays for the construction, his tenancy begins immediately on the completion of the building: *Billings v. Canney*, 57 M. 425.

11. Tender of a sum of money as rent, by a party affirming the existence of an agreement for a lease to a party denying it, has no tendency to prove the agreement: *Gilbert v. Kennedy*, 22 M. 117.

12. The purchaser of lumber becomes presumptively the tenant of the owner of the premises on which it is piled if he does not remove it within a reasonable time and on being notified that he must take it away; and if such notice is accompanied by a statement that a specified rent will be charged for their occupancy, he is presumed to assent to the terms if he does not remove it: *Ducey Lumber Co. v. Lane*, 58 M. 521.

13. One who goes into possession, admitting the title of the owner, cannot, after remaining quietly in possession for a long period, render his holding adverse by a mere silent determination of his own mind, so as to avoid a liability for the use of the premises: *Hogsett v. Ellis*, 17 M. 351.

14. Where a lessee of a water-front which he had used for the storage of logs ended his lease by proper notice, and removed all his logs, no subsequent acts would operate as a renewal or continuance of the tenure, which were not equivalent to a re-entry, or to the exclusion of any other possession. Merely leaving a boom there, which could be removed by the owner as well as by himself, would not operate as an assertion of continued possession: *Thomas v. Frost*, 29 M. 336.

15. Nor would passing rafts across the front to premises below, and closing the boom during their passage to prevent their floating into it, be an act of possession or tenancy unless accompanied by an assertion or design to that effect: *Ibid.*

(b) *Attornment; denying title.*

16. A tenant cannot, by his own act merely, change the tenure, so as to enable himself to hold against his landlord. He cannot, during the continuance of the lease or tenancy, make a valid attornment to a third person without his landlord's consent: *Byrne v. Beeson*, 1 D.

179; *Falkner v. Beers*, 2 D. 117; *Lee v. Payne*, 4 M. 106; *Blanchard v. Tyler*, 12 M. 339; *Fuller v. Sweet*, 30 M. 237; *Bertram v. Cook*, 32 M. 518; *Hoffman v. Clark*, 63 M. 175.

17. The tenant of a mortgagee, put into possession of a part of the mortgaged land under a parol agreement with the mortgager's grantee, cannot attorn to the latter, and a share of a crop raised by him and delivered as rent to his landlord cannot be seized by the grantee because the mortgagee begins a foreclosure: *Byers v. Byers*, 65 M. 596 (April 28, '87).

18. A contract by which a tenant is induced to desert his landlord is corrupt and void, and no action can be maintained upon it. If he accepts a lease from a third person, either he or his landlord may defend his possession against proceedings by such third person, by showing the prior existence of the tenancy: *Byrne v. Beeson*, 1 D. 179.

19. Though a mortgagee's lessee cannot dispute the right of his landlord to make the lease to him, he can attorn to, and take a lease from, the mortgagee after foreclosure; or he may show that the landlord's title has ceased and has become vested in himself through the mortgage: *Niles v. Ransford*, 1 M. 338.

20. The mortgagee cannot recover rent of one who has gone into possession of the land since the mortgage was given, as tenant of the mortgager, without an attornment by the tenant to him: *Hogsett v. Ellis*, 17 M. 351.

21. A notice by a purchaser at a mortgage foreclosure sale to a tenant of the mortgager, of such purchase, coupled with a claim of title and statement that rent is due and payable to him, the purchaser, and that he desires to hear from the tenant, must be personally served to make it a legal foundation for any proceeding to put the tenant in responsibility: *Williams v. Shelden*, 61 M. 311.

22. An attornment by a tenant to a third party, who has recovered the premises from him by an action of ejectment and writ of possession, is not voluntary in any such sense as to make it a wrong against the tenant's original landlord: *Foss v. Van Driele*, 47 M. 201.

23. Beyond its application to prevent a tenant from denying his landlord's title the doctrine of attornment serves but little, if any, useful purpose here; and it is inconsistent with our laws, customs and institutions: *Perrin v. Lepper*, 34 M. 292.

24. A tenant cannot dispute his landlord's title: *Byrne v. Beeson*, 1 D. 179; *Falkner v. Beers*, 2 D. 117; *Lee v. Payne*, 4 M. 106; *Blanchard v. Tyler*, 12 M. 339; *Hogsett v.*

Ellis, 17 M. 351, 373; *Ryerson v. Eldred*, 18 M. 12, 22; *Fuller v. Sweet*, 30 M. 287; *Bertram v. Cook*, 32 M. 518; *Nims v. Sherman*, 43 M. 45; *Campau v. Lafferty*, 43 M. 429; *Bertram v. Cook*, 44 M. 396; *Jochen v. Tibbells*, 50 M. 33; *Whitford v. Crooks*, 50 M. 40; *Henderson v. Miller*, 53 M. 590.

25. One who holds under a lease cannot buy in an outstanding title, or do anything inconsistent with the relation of tenant to landlord, without first yielding possession to the latter: *Bertram v. Cook*, 32 M. 518.

26. A tenant cannot, by buying in a title adverse to his landlord's, relieve himself of the obligations of his tenancy; and if he does so and repudiates the tenancy the landlord can dispossess him: *Morse v. Byam*, 55 M. 594.

27. Where one abandons his right to occupy under contract, and continues to occupy, his possession is that of a tenant estopped to deny his landlord's title: *Henderson v. Miller*, 53 M. 590.

Further on this subject, see ESTOPPEL, §§ 84-98.

Estoppel to set up tax-title against landlord, see ESTOPPEL, §§ 118, 119.

(c) Tenancies from year to year.

28. As the statute of frauds permits leases for a year to be created by parol, and as a parol lease for more than a year, and under which the lessee has been put in possession, is good as a lease from year to year, until terminated by notice, no action, except for the agreed compensation, can be maintained against one in possession under a parol agreement, without notice to quit: *Morrill v. Mackman*, 24 M. 279.

29. The owner of an undivided half of certain premises accepted a parol proposal from one who claimed as owner of a half-interest in the remainder, to rent the latter's undivided fourth at a specific rental per annum, payable quarterly in advance, without stating any period of time; *held*, that if this arrangement could be governed by the analogies of an ordinary lease, it was at most only a lease at will in its origin, and became after the lapse of a year no more than a lease from year to year, subject to be ended by the will of either party on notice to the other. A refusal to pay further rent under such an arrangement, and a disclaimer of tenancy, serve the purpose of a notice to terminate the tenancy: *Fuller v. Sweet*, 30 M. 237.

30. Where land has been occupied on shares, an oral agreement that the tenant

should have it three years more on shares, although within the statute of frauds, will support a holding from year to year until ended by notice: *Coan v. Mole*, 39 M. 454.

31. A tenant under an oral lease for an indefinite period, but whose rent is to be paid annually, is a tenant from year to year: *Judd v. Fairs*, 53 M. 518.

32. An oral lease was made for two years at so much a month the first year and a higher rate the second. After the first year had expired and the rent therefor had been fully paid, a new arrangement was made and rent was received for a few months. *Held*, that the tenancy was from year to year, notwithstanding the monthly payments: *Schneider v. Lord*, 62 M. 141.

33. When the parties agreed orally to make a written lease for twenty-one months, and, after going into possession, the lessees refused to accept a written lease, and no other contract was made, *held*, an indefinite holding, not a tenancy from year to year: *Huyser v. Chase*, 13 M. 98.

(d) Tenancies at will and by sufferance; notice to quit.

34. The common-law definition of a tenancy at will prevails in Michigan in the absence of a statutory definition: *Hilsendegen v. Scheich*, 55 M. 468.

35. Tenancy at will rests on the actual or presumed consent of the owner of the premises: *Gault v. Stormont*, 51 M. 636.

36. A tenant holding over is not a tenant at will unless he holds over by the express or implied consent of his landlord: *Benfey v. Congdon*, 40 M. 283.

37. A tenant who wrongfully holds over his lease does not acquire equities as a tenant at will by any brief delay in proceeding against him, and is not entitled to such notice to quit as a tenant at will could claim: *Ibid*.

38. A tenant by sufferance who is allowed to continue in possession under a new arrangement becomes a tenant at will: *Ramsdell v. Maxwell*, 33 M. 285.

39. Where a lease is invalid by the statute of frauds, the lessee having taken possession is a tenant at will; and if the agreement was to pay rent monthly, he is entitled to a month's notice to surrender possession before the proceedings can be taken to dispossess him. And such notice must terminate with one of the monthly periods: *Huyser v. Chase*, 13 M. 98.

40. Where premises are let at a fixed monthly rent, with the understanding that the tenant shall give up possession whenever

the landlord may require them for his own use, the letting creates a tenancy at will, which can only be terminated by a full month's notice to quit at the end of one of the regular monthly periods: *Woodrow v. Michael*, 13 M. 187.

41. A tenancy from month to month without other limitation, and determinable at the choice of either party to the lease, is a tenancy at will, and so is a holding over pending negotiations for a renewal of the lease; and the tenant is entitled to notice to quit even if he holds over without paying (H. S. § 5774): *Hilsendegen v. Scheich*, 55 M. 468.

42. A tenant who is allowed to hold from year to year so long as no other tenant is found before the expiration of his term is a tenant at will; and if he pays rent monthly he is entitled to a full month's notice ending with the year before proceedings can be taken to evict him: *Le Tourneau v. Smith*, 53 M. 473.

43. Where a house was sold under a contract and the vendee waived the contract right to its completion by a certain date, and was allowed to take possession in advance, it was held that the contract had been varied, and that the vendee did not hold under its conditions, but under the subsequent provisions, and was therefore a tenant at will, and entitled under H. S. § 5774 to three months' notice to quit: *Williams v. Hodges*, 41 M. 695.

44. A. sold a house to B., reserving the possession and use thereof four months as part of the consideration of the sale, but continued to occupy it twenty days after that time without any special arrangement. Held, that B.'s consent to such occupation was implied, and that A. became a tenant at will, entitled, in the absence of an agreement to pay rent at shorter intervals, to three months' notice to quit: *Hoffman v. Clark*, 63 M. 175.

45. One who has moved upon another's land with his consent is a tenant at will, and entitled to notice before he can be dispossessed by a grantee of the premises: *Appleton v. Buskirk*, 67 M. 407 (Oct. 27, '87).

46. A divorced wife, who with her husband's consent has kept possession of lands to which he holds the legal title, is at least a tenant at will, and entitled to notice before she can be disturbed: *Wilson v. Merrill*, 38 M. 507.

47. A sale of the premises to a third party does not of itself determine the tenancy at will existing between the vendor and vendee in an executory contract of purchase of land; under H. S. § 5774 notice is required: *Hogsett v. Ellis*, 17 M. 351.

48. A tenancy at will is determined by the

destruction of the building tenanted, and the ouster of the tenant: *O'Brien v. Cavanaugh*, 61 M. 368.

49. The right of possession transferred to the grantee by a deed absolute on its face is not defeated by a subsequent contract to reconvey in the future upon certain conditions, which is silent upon the subject of possession; and the grantor, holding over, becomes tenant, either by sufferance or at will, of his grantee: *Bennett v. Robinson*, 27 M. 26.

50. One who enters under lawful title and holds over without right and by reason of his landlord's laches after the termination of his interest is a tenant by sufferance: *Kunzie v. Wixom*, 39 M. 384; *Abeel v. Hubbell*, 53 M. 37.

51. The notice to quit to which a tenant at sufferance is entitled cannot be claimed by one who has asserted any title that directly or impliedly negatives the right to put an end to his interest: *Kunzie v. Wixom*, 39 M. 384.

52. A grantor who remains in possession without any contract becomes a tenant at sufferance, and as such is not liable for rent: *Stevens v. Hulin*, 53 M. 93.

53. A tenant in possession who has attorned to a stranger to the title is not entitled to notice to quit: *Steinhauser v. Kuhn*, 50 M. 367.

54. Under what circumstances a person holding over after foreclosure of a mortgage on the premises will be entitled to notice to quit, *quere*: *Allen v. Carpenter*, 15 M. 25.

55. A notice specifying fourteen days is a good notice to quit at the end of three months, if no proceeding is instituted upon it within that time: *Hogsett v. Ellis*, 17 M. 351.

56. In proceedings to obtain possession of lands, three months' notice is required whether tenancy is at will or by sufferance, so that it is immaterial, after notice given, whether the tenancy change from one form to the other: *Bennett v. Robinson*, 27 M. 26.

57. Notice to quit, where premises are held from month to month, must be given a full month before the day on which a new holding would begin. Where such holding begins on the first of the month a notice given May 6th would not be operative until July 1st: *Hart v. Lindley*, 50 M. 20.

58. Where the holding under a lease is from half month to half month, the terms expiring in the middle and at the end of the month, a notice to quit which fixes the expiration of the lease on the first day of a month is not materially erroneous, though it should not extend into the half month: *Detroit Savings Bank v. Bellamy*, 49 M. 317.

59. The statutes of 1838, requiring the landlord to demand possession of the premises, in

writing, from his tenant, at least twenty days before summary proceedings to recover possession, it was held that a demand requiring the tenant to quit the premises in ten days, but which was served twenty days before proceedings were instituted, was sufficient: *Chamberlain v. Brown*, 2 D. 120.

60. Where a lease permitted the tenant to keep possession until another building should be put in proper shape, the efficacy of a notice to quit, unless a monthly rent at a higher figure should be paid, would depend on whether the other building was ready; if it was, proceedings to recover possession could be based on the notice if the tenant failed to pay the higher rent for seven days after demand thereof: *D'Arcy v. Martyn*, 63 M. 602.

61. Summary proceedings to recover possession can hardly be based on a notice to quit that leaves the tenant an option to remain on payment of a stated rental: *Ibid*.

62. Lapse of time after a notice to quit may create a new tenancy: *Ibid*.

63. A tenant at will can waive notice to quit: *Moody v. Seaman*, 46 M. 74.

64. A notice to quit waives a previous notice: *D'Arcy v. Martyn*, 63 M. 602.

65. Where a sufficient notice to quit has been given, and the tenant has promised to leave at a fixed date, a repetition of the demand does not impair the effect of the original notice: *Moody v. Seaman*, 46 M. 74.

66. A five years' lease containing a clause by which the lessee agrees to give up the lease if his lessor concludes to build on the premises does not create a tenancy at will strictly, but rather a tenancy upon condition; the lessee is entitled to reasonable notice of the lessor's determination to build, and of his desire that the lease should be given up under said clause; the analogy of statutory notices to terminate a tenancy at will governs in determining what is reasonable notice. Where the lessor actually seized and held possession of the premises, and began building on them, it was held, though a trespass and wholly wrongful, to be a clear notice of the lessor's wish to terminate the tenancy and have possession of the premises, and to have the same effect as notice that a formal notice given at the time would have: *Shaw v. Hoffman*, 25 M. 162.

67. Where a tenant holds a portion of a lot under a lease stipulating that he shall give up the lease if his lessor concludes to build on the premises, his tenancy is not terminated by the landlord's taking possession of another portion of the lot, not leased, for the purpose of building on that; such taking possession is

not even notice of the lessor's intention to build on the leased portion: *Ibid*.

68. Notice to quit and demand of possession operate as an assertion of the intention to forfeit as well as a notice to quit: *Hogsett v. Ellis*, 17 M. 351.

69. If a purchaser by contract has leased the premises and left the country, notice to quit may be served on his lessee: *Ibid*.

70. The contents of a notice to quit are provable by compared copy or by parol without notice to produce the original: *Falkner v. Beers*, 2 D. 117. See EVIDENCE, § 1219.

II. RIGHTS AND LIABILITIES.

(a) *In general.*

As to what constitutes WASTE, and the remedies therefor, see that title.

71. Where a tenant rents premises from a firm, paying rent to it as landlord and owner, the question of legal title is unimportant in determining the firm's responsibility to the tenant for what it has assumed to do as lessor in the firm name: *Williams v. Shelden*, 61 M. 311.

72. Where a lease empowers a tenant to put in machinery and remove it at the expiration of his lease, the tenant cannot be held liable for such necessary damage to the freehold as is occasioned by removing the machinery with due care; especially if the particular damage is not specially counted on and proved: *Hunt v. Potter*, 47 M. 197.

73. The owner of premises in possession of a tenant will not be liable for an injury occasioned by the premises becoming, subsequent to the leasing, out of repair, in a case where the obligation to repair is on the tenant, and the owner has no legal control of the premises: *Fisher v. Thirkell*, 21 M. 1.

74. As between landlord and tenant the tenant is presumptively liable for a nuisance on the premises unless the lease contemplated its continuance, in which case both would be liable: *Samuelson v. Cleveland Iron Mining Co.*, 49 M. 164.

75. The tenant, and not the landlord, is liable for nuisances originating and kept up during the tenant's exclusive occupancy, unless the landlord is shown to be responsible for repairs. So held where the nuisance consisted in overflowing a neighbor's cellar by means of leaky and defective supply and water pipes: *Harris v. Cohen*, 50 M. 324.

76. Defendant rented the lower floor of his building to plaintiff, who had a dry-goods store there. Upon the upper floor, which was.

rented to other tenants, was a water-closet, under their control, but to which plaintiff had access, defendant having no control over it. Through improper use by some unknown person the closet became obstructed, the water overflowed, and plaintiff's store was damaged. *Held*, that defendant was not liable: *Kenney v. Barns*, 67 M. 336 (Oct. 20, '87).

77. The owner of premises who has leased them to a tenant without covenanting to keep them in repair is not liable to a third party who is injured by reason of their being out of repair while they are in the tenant's control, if the defect complained of did not exist at the time they were leased: *Johnson v. McMillan*, 69 M. 86 (March 2, '88).

78. So far as regards any injury by third persons to the use of land during a term of lease, no distinction exists between the rights of tenants for years or other terms and those of owners of the fee in possession. A term for years is as clearly property as ownership in fee, and just as much entitled to the protection of the law: *Grand Rapids Booming Co. v. Jarvis*, 80 M. 308.

79. One who is entitled to the possession of premises can remove the property left there by a previous tenant, if he exercises such care in doing so as the nature of the property demands; and if he leaves it in such a condition that the owner, by reasonable diligence, can take it uninjured, he is not bound to house it or otherwise protect it until the owner sees fit to take possession: *United States Manuf. Co. v. Stevens*, 52 M. 331.

Damages caused by landlord's altering other parts of leased building, see DAMAGES, §§ 117, 188.

Damages for interference, trespass or unlawful eviction by landlord, see DAMAGES, §§ 69, 98, 104, 181, 262-269, 384, 385.

Treble damages for wrongful entry or eviction by landlord, see DAMAGES, §§ 421-427, 433-443.

Recoupment by tenant of damages by landlord to goods on premises, see DAMAGES, § 527.

Damages to tenant for years from flowage, see DAMAGES, § 287.

(b) Repairs.

80. A lessor is under no general obligation to put premises in repair, and his covenants to do so are not to be enlarged beyond their fair intent, and he is not responsible for any damages not contemplated by the lease as chargeable to him, as the result of a failure: *Clark v. Babcock*, 23 M. 164.

81. The owner of a building owes a sub-

tenant, who is in possession without his knowledge or consent, no duty to keep the premises in repair: *Donaldson v. Wilson*, 60 M. 86.

82. Where, in consequence of the lessor's failure to repair, as he has covenanted, the flume of a saw-mill, the mill becomes useless, the lessee is not obliged to make the repairs himself, deducting the expense thereof from the rent, but may abandon the premises: *Bostwick v. Losey*, 67 M. 554 (Nov. 10, '87).

Damages for failure to repair, see DAMAGES, § 192.

Recoupment for breach of covenant to repair not allowed in summary proceedings, see DAMAGES, § 528.

Further as to repairs, see *supra*, §§ 73-77.

(c) Improvements; erections.

83. To entitle a tenant to be paid for improvements he has made, there must be between him and his landlord as definite an agreement as any other contract of employment: *Leslie v. Smith*, 32 M. 65.

84. A tenant's erections are not brought within a subsequent mortgage on the premises by the tenant's neglect to remove them on a renewal of his lease by a new landlord: *Kerr v. Kingsbury*, 39 M. 150.

85. A tenant's sale as personalty of permanent fixtures and the taking back of a chattel mortgage upon them does not affect the landlord's rights: *O'Brien v. Kusterer*, 27 M. 289. And see FIXTURES, II.

(d) Emblements.

86. Under an arrangement for raising a single crop on shares, the possession of the premises is held by the owner of the land, either alone or in common with the party who sowed the seed: *Wells v. Hollenbeck*, 87 M. 504.

87. A tenant's right to sell growing crops on abandoning the land during the life of his lease is not shown to be lost by failure to perform the conditions of the lease, unless it also appears that there was a clause of forfeiture for non-performance: *Dayton v. Vandoozer*, 39 M. 749.

88. After a lease was cancelled the landlord told the tenant to put in and harvest fall wheat, and promised that he should have his just and lawful share of it, but afterwards harvested and kept it himself. *Held*, that they were tenants in common of the wheat under a valid agreement, and that the tenant could maintain *assumpsit* on the common counts for the value of his share: *McLaughlin v. Salley*, 46 M. 219.

89. One who buys a growing crop of wheat from a tenant who owes no rent and whose lease is good is not divested of title by the latter's subsequent default and abandonment of the premises to his landlord: *Nye v. Puttersen*, 85 M. 413.

90. The rights of one who has bought a crop from a tenant will be protected against a subsequent forfeiture of the lease and the landlord's re-entry: *Miller v. Havens*, 51 M. 482.

91. Where a lessee whose lease gave him the option of renewing it at the same rate if the premises were not sold wrote to the lessor in the July preceding the expiration of the lease, while the two were negotiating for a surrender at the end of the term, a letter stating the terms upon which he would surrender, and adding "I shall want to know soon, as I shall want to commence plowing next week," held that, in the absence of any response from the lessor, the lessee was authorized to proceed and put in his wheat crop in the full belief that he was to hold the farm for another year; that the fact that the lessee was notified in the spring immediately preceding the expiration of his lease that the farm had been sold, and he could stay no longer, whereupon he left the premises, is immaterial; and that where the lessee, after leaving, returned and harvested his wheat, the lessor's grantee could not bring replevin for any portion of the wheat: *Starkey v. Horton*, 65 M. 96 (Feb. 10, '87).

92. One who, without fault on the landlord's part, rescinds his contract to farm another's land, and abandons the premises, yields his right to the crop sown: *Kiplinger v. Green*, 61 M. 340.

93. Under a contract by which lessees work a farm on shares, it seems to be their duty to deliver to the lessor his share, and not his duty to parcel their shares out to them: *Coe v. Wager*, 42 M. 49.

Damages for landlord's wrongful conversion of crop, see DAMAGES, § 322.

(e) *Liens.*

94. A lien on property given by a lease to secure the performance of its conditions is inseparable from the lease, and can only be enforced against the lessee by the landlord or his assignee: *Hansen v. Prince*, 45 M. 519.

95. A clause in a lease providing that anything placed on the premises shall be liable for the rent, and that the lease shall constitute a mortgage to secure it, and that on default the lessor may seize and sell the property on cer-

tain notice and may retain from the proceeds the rent and the "costs of such sale," does not justify the detention of property so seized if the rent is paid without sale and there is no showing of actual costs or of information thereof to the lessee, or of any notice of proceedings to be taken: *Hamilton v. Langley*, 52 M. 549.

96. A clause in a lease stipulating, by way of securing the payment of rent, that "all goods, wares and merchandise, household furniture, fixtures or other property which are or shall be placed in or on said premises by them, shall be liable, and this lease shall constitute a lien or mortgage on said property," does not cover the dwelling-house upon the premises: *Kuschell v. Campau*, 49 M. 84.

97. By the terms of a lease of a planing-mill the lessors were to have a lien for unpaid rent upon all improvements made by the lessee on the premises, and the lessee was authorized to remove — in case the rent should be paid — all machinery placed thereon by him, such machinery to be treated by both parties as "chattel property." Held, that no present lien upon or interest in the machinery was created by the lease, and that it was subject to mortgage by the lessee as personalty: *Booth v. Oliver*, 67 M. 664 (Jan. 5, '88).

III. LEASES.

As to validity of lease under the STATUTE OF FRAUDS, see that title, §§ 90-94, 166.

(a) *In general.*

98. A lease for years does not contravene the statute against perpetuities: *Toms v. Williams*, 41 M. 558.

99. An agreement for a lease and the lease itself are different things: *Tillman v. Fuller*, 13 M. 118; *Whiting v. Ohlert*, 52 M. 462.

100. A lease may be made to take effect in the future, and the estate does not begin with the contract, but with the future period: *Whiting v. Ohlert*, 52 M. 462.

101. It seems that usage permits a lease to be executed by exchanging duplicates, each of which is signed only by the other party: *Campau v. Lafferty*, 43 M. 429.

102. Where the assignee of an invalid lease has abandoned his family and a new lease is given to his wife, running in his name but signed by her by attaching her mark to his name without authority from him, he is not a party to the lease, and if she and her minor children farm the land she is entitled to the crops: *Cody v. Phelps*, 47 M. 481.

103. There is no error in rejecting vague

evidence offered by an alleged lessee to show that he did not understand he was making a lease when he signed the instrument, where such evidence is opposed to the testimony of the subscribing witnesses, and where the lessee has made no protest for sixteen years after discovering the alleged mistake: *Campau v. Lafferty*, 50 M. 114.

104. Neglect to cultivate does not authorize cancelling a lease on the ground that the lessee obtained it by the fraudulent representation that he was a skilful farmer: *Arnold v. Bright*, 41 M. 207.

105. An agreement by a lessee, in a memorandum signed by him at the foot of the lease, constitutes a part of the lease: *Norris v. Showerman*, W. 206, 2 D. 16.

106. In determining, in an action for rent upon an oral lease, the time when the lease commenced, it is proper to consider the time when defendant went into possession, the time from which he paid the rent, and all other circumstances throwing light upon the question: *Pendill v. Neuberger*, 67 M. 562 (Nov. 10, '87).

107. The parties to a lease do not, as matter of law, continue subject to its terms, where the tenant, against the landlord's will, holds over and continues in possession, and seeks to bind the landlord by provisions of the lease which have become inapplicable in consequence of changes in the premises: *Ives v. Williams*, 50 M. 100.

108. Leases by the special guardian of an incompetent person do not continue of their own force beyond the ward's life-time: *Campau v. Shaw*, 15 M. 226.

109. Leases to secure the payment of bonds can have no greater force than the bonds: *McKee v. Grand Rapids & R. L. St. R. Co.*, 41 M. 274.

(b) Construction and effect.

110. The intent of a written lease must be gathered from an examination thereof as a whole, and such a construction must be put on it, if possible, as will render all its clauses harmonious and consistent; it is against well settled rules to give it a narrow and technical interpretation based on some particular word or clause: *Harlow v. Lake Superior Iron Co.*, 36 M. 105.

111. Where, at the time a lease is executed, a third party executes under seal, upon the back thereof, an agreement to become surety for the payment of the rent and performance of the covenants mentioned in the lease, such agreement becomes a part of the

lease, and he may be sued jointly with the lessees for the rent due; and a subsequent reduction of the rent without his knowledge or consent does not discharge him: *Preston v. Huntington*, 67 M. 139 (Oct. 6, '87).

112. No particular form of words is necessary, in a lease from month to month, to constitute a condition precedent to the vesting of the tenant's estate, but unless the mutual intention that it shall be a condition appears from the language or circumstances, it will be treated only as a covenant: *Hilsendegen v. Scheich*, 55 M. 468.

113. A mere agreement by a tenant from month to month to pay rent in advance is a personal covenant, and not a condition precedent to the right of possession: *Ibid.*

114. An oral stipulation for rent at a specified annual rate, but without stating for how long, amounts to a lease for a year only: *Benfey v. Congdon*, 40 M. 283.

115. For the construction of the terms of a lease of water-power, see *Norris v. Showerman*, W. 206, 2 D. 16.

116. A lease of land to a tenant, "to have and to hold, to use and control as he thinks proper, for his benefit during his natural life," is a lease without impeachment for waste: *Stevens v. Rose*, 69 M. 259 (April 6, '88).

117. A lease of a salt-well implies no covenant that the well shall be of any particular productive capacity. In the absence of any distinct agreement the lessee takes it as he finds it: *Clark v. Babcock*, 23 M. 164.

118. Where the lessor of salt-works was made liable to a deduction of rent for delays caused by breakage, etc., and was required to have the works in order by a given time before the opening of the business season, in default of which the lessee was authorized to complete the work at his expense and deduct the same from the first payments, it was held that the lease contemplated that the lessee, having the same time allowed him as was given to the lessor, would be able, after the lessor's default, to finish the work before the business season, and that it did not authorize any claim for damages for delay from the lessor's failure to do the work in time, the remedy in the lease being evidently deemed sufficient to prevent any probable loss to the lessee from such delay: *Ibid.*

119. A lease of a farm, granting to the tenant "the privilege to keep and harvest all the crops (in case the land is sold) which he may have put in, and have either pay for what he may do in preparing to put in other crops, or the privilege of putting them in and harvesting the same, for the term of one year,

with the privilege of three years, if not sooner sold, from and after the 1st day of April, A. D. 1866," the lease containing an agreement on the tenant's part to "hire the said premises for the term of one or more years, as above mentioned," and that he would "not put in more than twenty acres of wheat in any one year," was held to confer upon the tenant the right to harvest a field of wheat of not more than twenty acres, after the expiration of the lease: *Brown v. Parsons*, 23 M. 24.

120. "Damages by the elements," which are ordinarily excepted from a lessee's covenants to keep in repair, cover destruction by fire occurring without fault or negligence in the lessee: *Van Wormer v. Crane*, 51 M. 363.

121. A covenant in the lease of a wooden building, binding the landlord to rebuild in case it burns, is released by the passage of a valid municipal ordinance forbidding the erection of wooden buildings: *Cordes v. Miller*, 89 M. 581.

122. Under a covenant to surrender premises in as good condition as when taken, reasonable use and wear and injury by the elements excepted, a tenant cannot tear out improvements which he has himself put in, if their removal injures the freehold: *Murray v. Moross*, 27 M. 203.

123. A lease of an hotel covenanted that new furniture added by the lessees should be included in the inventory to be made up when the lease expired, and accounted for accordingly, and that the lessor should have the right to take possession of it. Held, that this covenant could not cover furniture belonging to a third person but allowed by the lessee to be placed on the premises: *Beecher v. Bartlett*, 42 M. 60.

124. A lease for a term of years stipulated that after the term had elapsed either party might notify the other of the selection of an appraiser to make a valuation of the property, and if the other did not select another appraiser within thirty days he might do it himself, and the appraiser so chosen might make a valuation of the property which the lessor must pay on surrender of the premises and buildings, within thirty days after such surrender, the amount of the valuation to be a lien on the premises until paid. Held, that the lessee is not entitled to remain in possession while the appraisal is in progress: *Bressler v. Darmstaetter*, 57 M. 311.

125. Where a lease does not provide for re-entry on breach of condition, and there is no agreement that a failure to perform shall operate as a forfeiture or termination of the lease, the tenant cannot for such cause be said

to "hold over" contrary to the terms of the lease: *Pickard v. Kleis*, 56 M. 604.

126. The re-entry clause in a lease provides for its termination if the tenant holds over contrary to the conditions or covenants thereof. Held, that this refers to such conditions and covenants as are in the nature of limitations, and not to the lessee's mere agreement to do certain things: *Langley v. Ross*, 55 M. 163.

127. The erasure of a re-entry clause in a lease divests the landlord of the statutory remedy for recovering possession on the tenant's default in paying rent, because no terms of limitation are left in the lease, and the covenants are no longer linked with a condition: *Ibid*.

128. D. agreed by written lease dated August 12 to let M. "have possession of the building in which this business is kept till the brick store on the corner is in a proper shape for business, for the sum of fifty dollars, payable on the 1st day of January." Held, that D. could not show that the original understanding was for \$100 a year, while the proposition to pay fifty dollars was conditional on the speedy completion of the corner store; also that M. was not liable for more than fifty dollars, and his tenancy continued until that store was "in proper shape for business," however distant that event might be: *D'Arcy v. Martyn*, 63 M. 602.

129. A stipulation in a two years' lease that if the lessor sells within the first year the sale shall be subject to the lease for that year, and if afterwards, that it shall be subject to the lease for the second year or to such compromise as the parties may enter into, requires the lessee to give up possession at the end of the first year if sale is made within that period: *Jochen v. Tibbells*, 50 M. 33.

130. A lease provided that the lessee should "have the privilege of renting said premises for another year at the same rate, provided the lessor does not sell the same." Held, that the sale meant was an open, notorious one, that should be brought home to the lessee's knowledge; and until such notice he is entitled to deal with the lessor, the apparent owner of the title, the same as if he were the actual owner, and the grantee in a secret conveyance will be bound by the acts and declarations of his grantor, the lessor, until he takes some steps to inform the lessee of the sale: *Starkey v. Horton*, 65 M. 96.

131. Premises were leased for one year, the lease to be renewed "if both parties are suited, for eight years, reserving the right to sell," and after six years' occupation the lessors sold the premises to their nephews and

nieces for \$3, and a promise to give their sympathy and good-will to the grantors. *Held*, that the sale terminated the lease: *Wallace v. Bahlhorn*, 68 M. 87.

132. Lease "for the term of one year with the privilege of having the same three years at the same rate," at lessee's option, and containing a covenant that the lessee would, at the end of said term, deliver up quiet possession of the premises." *Held*, that the lessee by continuing in possession after the end of the first year elected to hold the premises for the full term of three years: *Delashman v. Berry*, 20 M. 292.

133. A year's lease gave the privilege of an extension for three years if written notice of the intention to continue should be given thirty days before the expiration of the year. *Held*, that the estate created by the lease terminated at the end of the year if the notice was not given as stipulated; and that an additional estate for three years could not, under H. S. § 6181, be created by any oral agreements or any waiver of the stipulation, actual or constructive, even though the tenant held over (distinguishing *Delashman v. Berry*, *supra*, § 132, in that the option allowed in that case did not have to be expressed in writing): *Beller v. Robinson*, 50 M. 264.

134. A three years' lease of a farm stipulated that if the land were sold for a certain sum the tenant should immediately surrender possession on being reimbursed for his labor and crops; it further provided that if the landlord did not return to his farm to occupy it himself the tenant was to have the privilege of continuing to farm the premises as heretofore. *Held*, that in summary proceedings to recover possession for violation of the provisions of the lease the return of the landlord was properly treated as on the same footing as a sale to a third person, and that on coming in at the end of the second year after three months' notice, and offering to pay for labor and crops, the landlord had a right to resume possession: *Lord v. Walker*, 49 M. 606.

(c) *Assignment and sub-lease.*

135. One of two lessors, even if the other be his wife, cannot assign the lease: *Hecht v. Ferris*, 45 M. 376.

136. A lease upon shares is a personal contract and not assignable where the amount of rent received must depend on the character and skill of the lessee, or where it gives the lessee the use of the lessor's tools on condition that they may be properly kept: *Randall v. Chubb*, 46 M. 311.

137. An agent executed a lease to certain parties for his principal. While it was still in force the principal executed an independent lease of the same premises to the agent, who then orally leased them for a smaller rent than before to the original tenants, who continued in possession without change. *Held*, that the original lease was surrendered by operation of law, and not assigned to the agent, and therefore that he could not claim from the tenants the difference in rent between the two: *Donkersley v. Levy*, 38 M. 54.

138. Where the lessee assigns his interest in the whole or a part of the demised premises for the residue of the unexpired term, the assignee is substituted in place of the original lessee as tenant, and stands in that relation to the original lessor. But where the demised premises are let for a part only of the unexpired term, the assignee is only a sub-lessee, and the relation of landlord and tenant does not exist between him and the original landlord: *Lee v. Payne*, 4 M. 106.

139. A covenant by a lessee not to transfer the lease without the consent of the lessor does not inhibit a sub-letting by the lessee: *Copland v. Parker*, 4 M. 660.

140. A lease by the lessee of the three lower stories and the cellar of a four-story store, which the lessee held under a lease in which he had covenanted "not to transfer this lease," was held no breach of this covenant: *Ibid*.

141. The lease of a building excepted all the upper story but the front room, and stipulated that if the tenant re-leased, or assigned the lease, without the landlord's written consent, the latter might re-enter. *Held*, that a license from the tenant to a third person to use a single apartment on the ground floor for thirty days, or even a sub-lease of the apartment for such a period, was not a breach of the condition, and that even if it was, the landlord was bound to show that it was without his written consent, before he could recover possession of the premises in summary proceedings: *Leduke v. Barnett*, 47 M. 158.

142. One who has taken a tenant's interest without the landlord's knowledge or consent takes subject to the obligations assumed by the tenant, and cannot be allowed, through their non-performance, to gain any advantage as against the landlord: *Bertram v. Cook*, 32 M. 518.

(d) *Breach; forfeiture.*

143. Forfeiture clauses in a lease are not favored by the courts, and their effect will be restricted as far as possible; but when the

lease explicitly provides that the landlord may treat it as void upon breach of condition by the tenant, his election to do so dissolves the relation between him and his tenant: *Miller v. Havens*, 51 M. 482.

144. Where a tenant had covenanted in the lease to pay certain taxes, it is no breach if, under a warrant for the collection of the assessment, the tax was paid by a sale of his leasehold interest and of buildings erected by him upon the premises. It was satisfied out of the tenant's and not the landlord's property: *Goode v. Ruehle*, 23 M. 30.

145. Where one of the conditions of a lease is the payment of taxes by the lessee, and a clause provides for re-entry upon breach of condition, it cannot be held that this clause does not apply to a failure to pay taxes, on the ground that another clause makes a building on the premises security for their payment; a lessor may have double security if his lessee consents to give it: *Brand v. Frumveller*, 32 M. 215.

146. A lessee's omission to pay a paving assessment could not properly be treated as a breach of his contract, if it arose from a question as to the validity of the assessment, and if he paid it when its validity was settled: *Eberts v. Fisher*, 54 M. 294.

147. The condition that the tenant shall not cease to use the house as a dwelling is a reasonable ground of forfeiture: *Marsh v. Bristol*, 65 M. 378 (April 14, '87).

148. A lessee's covenant to insure the property and to assign the insurance policy to the lessor was held not to have been broken where the insurance was in fact effected, but where, apparently by tacit consent of all parties, the practice of assigning was discontinued after a year or two. A court of equity would treat the stipulated insurance as held in trust for the lessor: *Eberts v. Fisher*, 54 M. 294.

149. A lease of wine and billiard rooms provided for re-entry in case of non-performance of any of the covenants at any of the times mentioned for the performance thereof. There were conditions against encumbering furniture or violating the law and ordinances relating to the business. Held, that as these conditions were continuous in their nature, any breach of them would be a breach of the time mentioned for their performance; and would be a cause of forfeiture: *Alexander v. Hodges*, 41 M. 691.

150. In a particular case the court held that there had been no such breach of the covenant to repair as would operate as a forfeiture of the lessee's rights under the lease: *Eberts v. Fisher*, 54 M. 294.

151. A personal lease is forfeited by an assignment and attempt to give the assignee possession, and the lessor may take immediate steps to recover the premises: *Randall v. Chubb*, 46 M. 311.

152. A lease provided for forfeiture in case of assignment by S., the lessee. It was to expire in 1884. In 1881 it was indorsed by the lessor, "For a valuable consideration I hereby give S. the privilege of occupying the store mentioned in this lease for ten years from 1884," the indorsement providing further that the rent should be the same, and all improvements were to be the lessor's property "as part of the consideration for extending lease." Held, that the indorsement constituted a new letting, cancelling the old lease, and could not be forfeited by an assignment: *Walsh v. Martin*, 69 M. 29.

153. A lease of a billiard-room provided that, in case of the violation of conditions, the lessor might re-enter, have again, retain, repossess, etc. Held, that absolute notice to quit and demand of possession, made at such a time and place that if complied with possession would be at once secured, constituted a sufficient re-entry: *Alexander v. Hodges*, 41 M. 691.

154. Where a lease is forfeited for non-performance of its conditions, no notice of re-entry or of intention to re-enter is necessary: *Pendill v. Union Mining Co.*, 64 M. 172.

155. At common law and by statute a demand for the rent or royalty due is necessary before the lessor can re-enter, but such demand can be waived by the parties: *Ibid*.

156. Where the agreed mode of declaring a lessor's election to forfeit the lease is by re-entry and taking possession, he has the right, and it is his duty, in the first instance to resort to it; and if prevented from so doing he may adopt any other lawful mode to obtain possession: *Ibid*.

157. The party entitled to the possession of property may take it in any manner that does not involve a breach of the peace, and H. S. § 8295, making a demand for payment of rent a condition precedent to re-entry, does not take away this right: *Ibid*.

158. Though a lease gives the lessor the right to terminate it without notice, yet if proceedings to gain possession are necessary they must be taken by the statutory summary method or by action of ejectment: *Ibid*.

159. Continuing conditions in a lease are not necessarily waived by receipt of rent after they have been violated; the lessor can exercise forbearance in furtherance of his own in-

terests and those of the tenant: *Alexander v. Hodges*, 41 M. 691.

160. The mere receipt of rent due before forfeiture, after the lease has been forfeited, is not a waiver of the forfeiture: *Pendill v. Union Mining Co.*, 64 M. 172.

(e) *Surrender; novation and renewal.*

161. Where, after agreeing to surrender a lease, the lessee says to the lessor, "you may consider the ground in your possession this evening," and acting upon that statement the lessor takes possession without hindrance, and keeps it, the surrender is as effective and valid as if the lessor had broken a twig over the land, or made any other symbolical delivery: *Baumier v. Antiau*, 65 M. 81.

162. A., by deed, leased premises to B., who afterwards assigned the lease to C. A. assented to the assignment, and agreed, by parol, to accept C. as his tenant, and to look to him for the rent. *Held*, that there had been a sufficient surrender of the lease by operation of law to satisfy the statute — Code of 1833, p. 342, § 9 (see H. S. § 6179) — which declared that "no lease, etc., shall at any time hereafter be assigned, granted or surrendered, unless it be by deed or note in writing, signed," etc., "or by operation of law;" and that A. could not afterwards maintain covenant against B. for the rent: *Logan v. Anderson*, 2 D. 101.

163. A voluntary surrender of leased premises to a landlord prior to the expiration of the term by the lessee's assignee in bankruptcy, who is informed by the landlord that he intends to hold the lessee for the rent for the residue of the term, does not, though the landlord afterwards rents the premises to others, amount to an eviction or to a surrender of the term; surrender must be by mutual consent of the parties to the lease: *Stewart v. Sprague*, 71 M. 50.

164. In an action to recover rent, where the defence set up is that the tenants surrendered and abandoned the lease and premises with the landlord's assent, evidence of the occupancy of the premises or a part of them by third parties, of the delivery of the key to the landlord, and of negotiations between the landlord and third parties for a new lease, is competent upon the question of surrender in fact: *Hill v. Robinson*, 28 M. 24.

165. The abandonment or surrender by a lessee of his interest under a lease cannot be inferred from a mere non-user: *Doty v. Gillett*, 43 M. 203.

166. For a case where it was *held* that there

had been a final abandonment by the lessees of their rights under leases of mining lands, see *Porter v. Noyes*, 47 M. 55.

167. Where one let premises for six months on monthly payments in advance, and before the first month expired the lessee turned over the lease to another, who, at the lessor's request, agreed in writing to comply with the terms of the original lease, but soon after the opening of the second month surrendered possession of the premises on demand of the original lessee, but without notice to the lessor, who thereupon sued him for the rent of the second month, it was *held* that this was not a case of novation. To have made it such the defendant must have been liable to the lessee for the rent sued for, and must have promised to pay it to the lessor in consideration of such liability, and by the lessee's order or consent, and in discharge of the lessee's obligation: *Meister v. Birney*, 24 M. 485.

168. A tenant who has refused to pay rent until repairs are made, and is accordingly notified to quit, has a right to regard the lease as ended, and if the landlord then agrees to make the repairs provided the tenant will stay, the lease is a new one: *Conkling v. Tuttle*, 53 M. 630.

169. Whether or not a covenant for a renewal of a lease implies a renewal on the same terms, or binds the lessor to any covenants whatever, *quere*: *Brand v. Frumveller*, 33 M. 215.

170. Where a lease provides for its own renewal upon terms to be decided by referees, and they vary its terms and their award is accepted, the party accepting it must be held bound by the terms of the original lease as varied by the referees: *Ibid*.

171. It is always a presumption that a lease for one year with the privilege of several is to be continued on the same terms and with the same rights and privileges to the tenant as during the first year, unless some other intention is expressed: *Brown v. Parsons*, 23 M. 24.

172. Where a lease gives the lessor the right to elect, at the end of the term, whether or not to renew the lease, such election may be made on or before the last day of the term: *Darling v. Hoban*, 53 M. 599.

173. Assent to the continued occupancy of farming lands upon the same terms as before may fairly be presumed if, at the beginning of the planting season, the owner silently permits the occupant to continue in possession for some weeks longer, and does not enforce a contingent arrangement for the surrender of the premises at that time. And in subsequent

proceedings to recover possession as from a tenant holding over. he is estopped from showing that any such arrangement existed: *Pickard v. Kleis*, 56 M. 604.

174. A lessee of land agreed to put up a building thereon, the value of which was to be appraised at the expiration of the lease, when the lessor, after proper notice, could have the building on paying its value, or the lease should be extended. *Held*, that an appraisal of the building was unnecessary where no notice was given of a purpose to terminate the lease. And an appraisal of the land by mutual consent was equivalent to an agreement that the lease should be continued, and should not be interfered with by partition where the parties to the lease were tenants in common: *Eberts v. Fisher*, 54 M. 294.

175. Notice of a landlord's election to renew a lease need not be in writing, unless the lease so stipulates, so long as the lease itself contains all the terms and conditions of renewal and the tenant is in possession. Nor need a new lease be tendered, especially if the tenant has declared that he will not accept a renewal: *Darling v. Hoban*, 53 M. 599.

IV. RENT.

(a) *In general; liability.*

176. Rent is a sum stipulated to be paid for the actual use and enjoyment of another's land, and is supposed to come out of the profits of the estate: *Marsh v. Butterworth*, 4 M. 575.

177. Rent, strictly so-called, always grows out of express contract, and is fixed and definite in amount; consequently a tenant by sufferance is not liable therefor, though he is liable for reasonable compensation for use, etc.: *Hogsett v. Ellis*, 17 M. 351.

As to recovery for use and occupation, see ASSUMPSIT, §§ 30-42; CONTRACTS, §§ 89-91.

178. A parol promise by one in possession to pay rent to one out of possession, and who has no title, is void for want of consideration: *Fuller v. Sweet*, 30 M. 237.

179. A contract to pay rent is not to be inferred from the mere continued occupancy by a grantor after he has conveyed the premises: *Stevens v. Hulin*, 53 M. 93.

180. One who enters upon the use of another's property with full knowledge of the rent demanded therefor is under contract obligation to pay such rent, even though he has originally refused to or has said that he would only pay under protest: *Thompson v. Sanborn*, 52 M. 141.

181. The lessees of a dam covenanted to

pay half "of all tolls and money that may be earned by the use of said dam for driving logs or other purposes." *Held*, that the rent was not confined to tolls but included any earnings from log driving that could fairly be traced to the benefits of the dam: *Rayburn v. Mason Lumber Co.*, 57 M. 273.

182. The owner of a water-power leased a portion of it for ninety-nine years, at a specified rent for the first seven years, after which a rent was to be paid equal to that asked of others using the water-power, not to exceed \$20 per horse-power. At the expiration of the seven years there were no other parties using the water-power. *Held*, that the rate fixed for the seven years must continue until other parties should rent at a different one: *Lamb v. Constantine Hydraulic Co.*, 59 M. 597.

183. A three years' lease of farm lands began in March, 1877, and the rent was to be paid annually, Oct. 15. Sept. 2, 1878, the parties terminated the lease, but it was agreed that the tenant might keep possession until he could harvest his crops; that he was to pay no rent from that date, and that this stipulation was not to affect the rent to become due in October. *Held*, that this did not bind him to pay the rent for the whole year, but only until Sept. 2, the date of the stipulation: *Bates v. Phinney*, 45 M. 388.

184. By the terms of a lease of an hotel the rent was made payable in monthly instalments, and the lessor agreed to take one-half the same "in board as the same falls due." *Held*, that it was not optional with the lessee to pay in money or board, but that he was under the same obligation to pay the board, if demanded, as the lessor to receive it: *Evans v. Norris*, 6 M. 369.

185. The lessee was under no obligation to call upon the lessor, and demand that boarders be sent, but the lessor was bound to call for the board within the term, and substantially as the same fell due: *Ibid*.

186. A lessee has the whole of the day on which his rent falls due for making payment, and a taking, under a lease purporting to give a lien, of property for default in payment of rent before the day has expired, is a taking before default, and consequently a trespass: *Dalton v. Laudahn*, 27 M. 529.

As to the damages for such trespass, see DAMAGES, §§ 313, 314.

187. Where rent is payable weekly, or at other stated intervals, in advance, the tenant has the whole of the first day of each succeeding week, or other interval of time, in which to make the payment: *Sherlock v. Thayer*, 4 M. 355.

188. Where a lease provides for monthly payments, but does not fix the time for payment, rent is not due till the end of the month; but it is competent to agree that it shall be paid in advance and to make such payment a condition to the vesting of any estate in the tenant: *Hilsendegen v. Scheich*, 55 M. 468.

189. Where a lease for half-months expires with the last day of a month the period for which rent is due ends at midnight and the lessee cannot be required to leave before: *Detroit Savings Bank v. Bellamy*, 49 M. 317.

190. Where a tenant is dispossessed by one who enters under a paramount title, such entry is equivalent to an eviction by legal process, and will excuse the tenant from paying rent to the landlord. The tenant is not bound to retain possession until actually expelled by legal process; but may quietly yield possession, incurring the risk of being able to show that the entry was under a paramount title: *Marsh v. Butterworth*, 4 M. 575.

191. Where a landlord, during the continuance of a lease, without the consent of the tenant, enters upon the demised premises, which have been vacated by the tenant, and the entry is followed by a continuous possession inconsistent with the possessory right assured to the tenant by the lease, such possession amounts to an eviction, and precludes the recovery of rent while it continues: *Day v. Watson*, 8 M. 535.

192. And this is so whether the entry be for condition broken or not. If for condition broken, it signifies an intention to terminate the lease entirely; while, if the landlord regard the lease as still continuing, the right to rent is suspended during the occupancy: *Ibid*.

193. Rent is the consideration for occupancy, and there is no consideration for its payment when the enjoyment of the rented premises ceases: *Bates v. Phinney*, 45 M. 388.

194. Where the consideration of a lease fails, the lessee is justified in leaving and in refusing to pay further rent: and when premises are rented with the distinct understanding that they are in good condition, that becomes part of the consideration: *Tyler v. Disbrow*, 40 M. 415.

195. A lessor who exacts covenants that the lessee has received the premises in good condition, and will so keep and return them, cannot, in *assumpsit* for unpaid rent, deny that their condition was a consideration for the lease: *Ibid*.

196. One who leases premises to an Odd Fellows lodge, contracting in the lease that they shall be suitable for the lessee's purposes, cannot recover rent therefor if the premises

are not suitable or rendered suitable within a reasonable time; *Youngs v. Collett*, 68 M. 331.

197. Where premises leased for the purposes of an Odd Fellows lodge were given up to the landlord, who took up the floor, rendering the room untenable, and then neglected to make the needed changes and repairs, such neglect amounted to an eviction, excusing non-payment of rent: *Ibid*.

198. A water-lot, extending by the terms of the lease to the channel-bank of the river, and including "all the liberties and privileges belonging to the premises," was rented to be used for a boat house. During part of the term the landlord caused his propeller to be moored at the docks, on either side of the slip and in front of the premises, shutting off ingress and egress, and thereby depriving the lessee of the particular and only use for which the premises were rented. *Held*, such an eviction as would abate the rent during its continuance: *Pridgeon v. Excelsior Boat Club*, 66 M. 326 (June 16, '87).

199. One who holds land under a contract of purchase is not liable for rent while the contract remains open, and no notice to quit or pay rent, or of an intention to forfeit, has been given: *Dwight v. Cutler*, 8 M. 566; *Hogsett v. Ellis*, 17 M. 351.

200. Where a lessor rents to others premises that have been given up to him by the lessees before their term expires, he does not release the payment of any deficiency in rent that may arise: *Stewart v. Sprague*, 71 M. 50 (June 22, '88).

201. Where, as security additional to a mortgage, a paid-up lease for ten years of other than the mortgaged premises was given, which provided that it should be at the lessees' option to keep possession after a certain date, on or after which, also, the lessees might cancel the lease if the bond should be fully paid, *held*, that when the mortgagees had satisfied their debt by a foreclosure, they could not keep possession without paying rent: *Dutton v. Merritt*, 41 M. 537.

202. But if there is a deficiency the mortgagees have a right to apply the amount of rent due from them and unpaid in satisfaction of the foreclosure decree, and an assignment by the mortgager to a third person of his claim for rent cannot prevent this: *Storey v. Dutton*, 46 M. 539.

(b) *Rights and liabilities of others than the original parties.*

203. A deed of land under lease conveys the landlord's rights, as against the lessee,

without further ceremony: *Hansen v. Prince*, 45 M. 519.

204. A conveyance of leased lands with the reversion, remainder, "rents, issues and profits thereof," transfers to the grantee the right to collect and sue for the rent thereafter accruing, and the tenant cannot defeat his action by refusing to attorn to him: *Perrin v. Lepper*, 84 M. 292.

205. An assignment by a wife to her husband of "all the use" of certain premises leased to other persons but held in her name, "for his use and benefit," is not specific enough to give him the right to rents under existing leases: *Spicer v. Bonker*, 45 M. 630.

206. Past-due rents cannot be recovered by the grantee of a lessor unless his deed confers the right to them: *Pendill v. Eells*, 67 M. 657 (Jan. 5, '88).

207. A deed intended as a mortgage will not sustain a claim by the grantee for the rent of the premises if the grantor remains in possession: *Stevens v. Hulin*, 53 M. 93.

208. The surrender of a lease by the tenant before the expiration of his term, with the lessor's knowledge, will defeat a suit for subsequent rent by the lessor's grantee, who takes a deed while the premises are unoccupied: *Foster v. Fleishans*, 69 M. 543 (April 20, '88).

209. Where a paid-up lease for a certain period is given to mortgagees as additional security, the assignee of the mortgagor's claim for rent of the leased premises has no greater rights than his assignor: *Storey v. Dutton*, 46 M. 539.

210. B. and S. held mortgages on certain rented premises already heavily encumbered. S. obtained an assignment of B.'s mortgage, and in order that his own might not be merged procured a deed of the premises to be made to his wife, intending to collect the rents until a foreclosure of prior mortgages. His wife assigned to him "all the use of" the premises "for his use and benefit." B., who understood these arrangements, meanwhile procured assignments of the leases and collected the rents himself in advance. S. sued him for money had and received to plaintiff's use. *Held*, that an instruction to find for defendant did not prejudice the plaintiff, whose right of action arose under the assignment from his wife, and as she did not hold the leases, her right to collect the rents, if she had that right, rested on her ownership of the equity of redemption and on whatever estoppel may have arisen against B.; but the word "use" in her assignment was too uncertain to cover rents under leases which she did not hold: *Spicer v. Bonker*, 45 M. 630.

211. Plaintiff's knowledge of the actual possession by tenants was notice enough to exclude any benefit from defendant's neglect to inform plaintiff of the advance payment: *Ibid*.

212. That there can be no recovery for use and occupation of leased premises against others than the lessees while lease is in force and not surrendered or assigned, see *Doty v. Gillett*, 43 M. 203.

(c) *Actions for rent.*

As to the action for use and occupation, see ASSUMPT, §§ 30-42.

213. An action for rent must be brought in the names of the lessors if the lease has not been assigned: *Hecht v. Ferris*, 45 M. 376.

214. A lessor may convey the reversion with the rent, or, retaining the reversion, may assign the rent; and in either case the grantee or assignee may sue for the rent, irrespective of any formal attornment by the tenant: *Perrin v. Lepper*, 84 M. 292.

215. An agreement that a person who retains no ownership in the lease, and has sold the land, should receive certain portions of the rent thereafter payable, gives him no title to enforce such payment by any action founded directly on the lease itself. All rights of that kind belong to the grantee of the land under lease, where they cannot be separated from the ownership of that instrument, and the beneficial interest in the partial revenues must be enforced in some other way: *Hansen v. Prince*, 45 M. 519.

216. In an action for rent the non-joinder of a co-tenant as plaintiff can only be set up in abatement, and where not so pleaded it will go merely to apportion the damages: *Perrin v. Lepper*, 84 M. 292.

217. One named as the payee of the rent in a lease executed by another party may in her own name sue the lessee therefor: *Toan v. Pline*, 60 M. 385.

218. In declaring on an agreement as a demise, there are but two proper modes of stating it: first, by its legal effect; or, second, by setting it forth in such a manner that its legal character can be seen: *Tillman v. Fuller*, 18 M. 113.

219. Suit to recover rents. The declaration set forth an agreement on the part of the plaintiff to lease the premises to the defendant, in consideration of which the defendant did actually rent and hire the premises. It was *held* that such agreement to lease could not be a consideration for an actual renting, unless it was so stated as to amount to a present demise: *Ibid*.

220. In an action for the recovery of rent on a [parol lease, the time of the commencement of the term must be stated, and must be proved as alleged: *Pendill v. Neuberger*, 64 M. 230.

221. Where the tenant's possession is not received from the party who claims rent, it is proper to authorize the claimant's title to be investigated, unless there is some other ground of estoppel: *Fuller v. Sweet*, 30 M. 237.

222. There can be no implied grant of possession by one who could not have put the tenant out of possession if he had refused to make an arrangement: *Ibid.*

223. In an action for rent against the sureties on an appeal bond bringing up proceedings for the recovery of the premises leased by a man and his wife, an order payable out of the rent, signed by the man but not by the wife, and drawn upon the tenant, is inadmissible where there is no assignment of the lease by both lessors: *Hecht v. Ferris*, 45 M. 376.

In action for rent, receipts for prior months irrelevant: See EVIDENCE, § 23.

LARCENY.

See CRIMES, §§ 274-321; EVIDENCE, §§ 91-93, 205, 384, 927, 968, 970.

LIBEL.

I. WHAT CONSTITUTES.

- (a) *What is libellous.*
- (b) *Malice.*
- (c) *Privileged communications.*
- (d) *Interpretation of the language.*

II. PLEADING; EVIDENCE; DAMAGES; JUSTIFICATION AND MITIGATION.

As to criminal prosecutions for libel, see CRIMES, §§ 574-576.

I. WHAT CONSTITUTES.

- (a) *What is libellous.*

1. Every false and malicious publication of language concerning a man or his affairs, which, as a natural or necessary and proximate consequence, occasions him pecuniary loss, is *prima facie* a libel, if the publication be by writing: *Weiss v. Whittemore*, 28 M. 366.

2. The rules which divest spoken words of an actionable quality do not necessarily apply to written or printed libels: *Foster v. Scripps*, 39 M. 376.

3. Private persons cannot lawfully be made the subject of ill-natured remarks in the public press, where they have done nothing to expose themselves to public censure; and where such things, having an injurious tendency, are published, the persons giving them publicity must find some justification, or be responsible for the mischief: *O'Connor v. Sill*, 60 M. 175.

4. All newspaper mention of private persons must be made under the private obligation of publishing no untruths to their prejudice, and the public obligation of saying nothing at all to their prejudice unless on adequate occasion. Otherwise the statements made may be libellous even though they would not be actionable if unwritten: *Tryon v. Evening News Assoc.*, 39 M. 636.

5. It is not libellous to publish of and concerning one who is a druggist: "The above druggist in the city of Detroit refusing to contribute his mite with his fellow merchants for watering Jefferson avenue, I have concluded to water said avenue in front of T.'s store, for the week ending June 27, 1846:" *People v. Jerome*, 1 M. 142.

6. To render a publication libellous it must indicate the person intended by name, or connect him with some fact or circumstance, known to those to whom the publication is addressed, by which they may understand who is meant. And to enable a jury to determine upon the application, such fact or circumstance should be in proof; and that cannot be unless it is pleaded: *Lewis v. Soule*, 3 M. 514; *Bourreseau v. Detroit Evening Journal Co.*, 63 M. 425.

7. Action based upon the publication of the following words: "It must be and is painful to all who feel the force of conscientious impulses, and who regard the solemn responsibility of an oath, to witness at our elections the frequent violations of truth, committed by those brought forward at the polls. The recurrence of false swearing is too common to pass unpunished. No casuistry can palliate or excuse it." The inducement set forth was that plaintiff was supervisor of the township; that there was a general election; that plaintiff was a member of the board of election; and also a candidate for re-election. *Held*, that the alleged libellous words were too vague and uncertain to constitute a charge of perjury; and that in connection with the intrinsic facts pleaded, the perjury was not sufficiently alleged: *Lewis v. Soule*, 3 M. 514.

8. A railroad company supplied certain of its agents with a tabulated list of employees who had been discharged, stating in parallel

columns the name and occupation of the employee, and under the heading "Why discharged," the reason. *Held*, where the reason given was "stealing," the statement was libellous, and its issue to agents was a publication: *Bacon v. M. C. R. Co.*, 55 M. 224.

See *infra*, § 19, 41.

9. It is libellous to publish to the injury of a newspaper reporter an untrue statement showing that he has violated a private confidence by tale-bearing: *Tryon v. Evening News Assoc.*, 39 M. 636.

10. A newspaper article charging a druggist with making as well as selling counterfeit Haarlem Oil, and putting it in counterfeit wrappers, is libellous: *Steketee v. Kimm*, 48 M. 322.

11. A newspaper article, after stating that P. had murdered a certain girl, said she was known as P.'s woman, and that he had told an alleged confederate that he need have no fears about her murder, and had hired him to steal a sack, which he received [to put the body in]; that he had furnished a wagon in which to take her body to the river; that he had intimated to his wife that the girl had been murdered to get rid of her, and that he had confessed adultery to his wife, for which the wife had left him. *Held*, that these were all libellous charges, for which P. was entitled to damages unless it was proved that he had murdered the girl: *Peoples v. Detroit P. & T. Co.*, 54 M. 457.

12. It is libellous to publish of a lawyer an article charging him with giving dishonest, unprofessional advice, with making false statements in professional dealings, with incurring loss of confidence by misconduct, with embezzling moneys, and with making false charges for services and extorting excessive compensation: *Atkinson v. Free Press*, 46 M. 841.

13. A printer's mistakes, made without wrongful intent in printing a self-laudatory article furnished for publication by the subject of it, cannot be held a malicious libel: *Sullings v. Shakespeare*, 46 M. 408.

14. A publication that charges plaintiff with gross misconduct in the office of deputy-sheriff, with arresting and handcuffing men without right, merely to get the legal fees, and oppressing the poor and friendless under color of office, is libellous *per se*: *Bourreseau v. Detroit Evening Journal Co.*, 63 M. 425.

15. Whether, where dismissal from employment as agent is the special injury complained of in a case of libel, the words, to be libellous, impute some charge or matter in relation to the plaintiff's business, trade or

avocation, which, if true, would render him unworthy of employment, *quere*: *Weiss v. Whittemore*, 28 M. 366.

16. A civil action for newspaper libel was based on the publication of an article shown by defendant to have been handed to him for publication by plaintiff himself, but which was illegibly written, and was not published as written; there was no showing that it had been intentionally altered nor any plain proof of negligence; and it was also shown by defendant that plaintiff had said he would be satisfied if it could be corrected and put in the weekly edition. Plaintiff did not deny this and was not examined as to the article, and there was no testimony indicating what words were changed. *Held*, that the article could not go to the jury as a basis of damages: *Sullings v. Shakespeare*, 46 M. 408.

As to libel of fellow-member of corporation, see CORPORATIONS, § 168.

(b) *Malice.*

17. The wilful publication of injurious statements involves the design to produce whatever injury must necessarily follow; and when done purposely, knowingly and for no good purpose or justifiable end, it is malicious in the sight of the law even if done without any actual personal ill-will: *Maclean v. Scripps*, 52 M. 214.

18. A false and injurious publication made in a public journal "for sensation and increase of circulation" is, in a legal sense, malicious: *Ibid*.

19. Where in a "discharge list" sent by a division of a railroad company to a fellow-agent, the reason given for the discharge of an employee was "stealing," and it appeared that he was turned off because he had taken a good coat of a passenger from a train on which he was riding, and left his own, which was much worn, in its place, and that the investigation of his explanation, that he did it by mistake, while hurriedly leaving the cars at his station, was not fairly conducted, there was evidence tending to show express malice on the company's part, and it was error to direct a verdict in its favor: *Bacon v. M. C. R. Co.*, 66 M. 166 (June 9, '87).

20. Other similar publications made by defendant on the same or the following day may be shown as bearing on the question of malice: *Whittemore v. Weiss*, 33 M. 348.

21. In an action of libel for a publication not privileged, it is error to direct a verdict for defendant where plaintiff's evidence tends to show that defendant authorized the publi-

cation, and also express malice on defendant's part in so doing: *Wheaton v. Beecher*, 66 M. 307 (June 16, '87).

(c) *Privileged communications.*

22. Newspapers have no privilege that will excuse them in printing libels of which any other publication would not be excused: *Foster v. Scripps*, 39 M. 376.

23. While the mischief which may be caused by an abuse of the press is such as to render its conductors responsible for great care in guarding against the danger, yet the necessities of civilization require that no unreasonable or vexatious restrictions should be imposed upon them: *Detroit Daily Post Co. v. McArthur*, 16 M. 447.

24. It is the right and duty of newspapers to discuss measures relating to the health, welfare, comfort and happiness of the people. But this will not justify libellous statements: *Scripps v. Foster*, 41 M. 742.

25. Newspapers may discuss what relates to the life, habits, comfort, happiness and welfare of the people, and in doing so may state facts, draw inferences therefrom and express views upon the facts. Their deductions, even if false, are not actionable unless they cause special damages, but damage is presumed if they impute the commission of crime: *Peoples v. Detroit P. & T. Co.*, 54 M. 457.

26. A newspaper statement imputing the commission of crime, but based on facts that have no legal tendency to prove it, is not privileged: *Ibid.*

27. A newspaper statement to the effect that a designated city physician, appointed by the common council and not chosen at a public election, has caused the death of a patient by reckless treatment, is not privileged, and if false is libellous: *Foster v. Scripps*, 39 M. 376.

28. It is matter of privilege to call public attention to the act of a judicial officer in ordering a person into confinement without a charge against him, or in requiring bail in an amount which, considering the prisoner's probable means and position in life, he is unable to pay; these are violations of the most important guaranties of constitutional freedom, and are matters of public concern: *Miner v. Detroit P. & T. Co.*, 49 M. 358.

29. A publication in a newspaper falsely imputing a charge of crime against a candidate for an elective office is not privileged though made in an honest belief of its truth; though the fact that it was published in good faith and after reasonable investigation may go in mitigation of damages: *Bronson v. Bruce*, 59 M. 467.

30. An article in a newspaper falsely charging a public officer with gross misconduct in office cannot be claimed to be privileged on the ground of its publication being a public good: *Bourresau v. Detroit Evening Journal Co.*, 63 M. 425.

31. A superintendent of public schools, who, in order to vindicate himself from a newspaper attack emanating from a member of the board of education and involving his opposition to a certain teacher, authorizes the publication of an article criticising the teacher's method and her conduct toward him, cannot be held responsible for libel unless he makes serious false charges of fact or wanton or irrelevant assaults on such teacher: *O'Connor v. Sill*, 60 M. 175.

32. Pending plaintiff's candidacy for the appointive office of city controller, defendant, a citizen, said in an interview with a reporter that he "shouldn't wonder if the city would have the same experience with plaintiff that England had with Cyprus, in which England thought it secured a great bargain, but which turned out a huge graveyard." The interview being published in a newspaper, held, that the publication was not privileged: *Wheaton v. Beecher*, 66 M. 307 (June 16, '87).

33. Whether the publication of libellous allegations contained in a bill of complaint upon the files of a court is privileged, *quere*: *Scripps v. Reilly*, 35 M. 371.

34. The publication of court proceedings is not so far privileged as to justify a sensational accompaniment of defamatory comments upon the characters of those in relation to whom the proceedings are taken: *Scripps v. Reilly*, 38 M. 10.

35. The publication of judicial proceedings is not privileged to the extent of protecting statements made in connection therewith but drawn from other sources and without stating the judicial conclusion: *Bathrick v. Detroit P. & T. Co.*, 50 M. 629.

36. Statements in an affidavit made in support of an answer to be used in opposition to an application for an injunction are privileged, provided they are not irrelevant and impertinent: *Hart v. Baxter*, 47 M. 198.

37. Where a bill was filed by a mortgager to reform the mortgage, and the bill charged an agent of the mortgagee with fraud in connection with the drafting of the mortgage, and the agent made his affidavit in support of the answer, and averred therein that the charge of fraud was wilfully and maliciously false, held, that an action counting on these words as a libel would not lie: *Ibid.*

38. A communication, representing that a

certain person was of bad moral character, and wholly unfit to teach and have the care of a district school, was made to a township superintendent, by persons interested in a particular school within his jurisdiction, for the sole purpose of preventing the issue to the person so charged of a license to teach the school. *Held*, that it was a privileged communication, and abundantly justified by proof that he was an habitual blasphemer and profane person, and an open violator of the Sabbath: *Wieman v. Mabee*, 45 M. 484.

39. An action for libel will not lie on a communication relating to personal character, if made in good faith and for an honest purpose by persons concerned, and to the proper person. Nor will it lie when such a communication is untrue, if it is not maliciously made: *Ibid*.

40. Qualified privilege extends to all communications made *bona fide* upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty to a person having a corresponding interest or duty; and it embraces cases where the duty is not a legal one, but where it is of a moral or social character of imperfect obligation: *Bacon v. M. C. R. Co.*, 66 M. 166 (June 9, '87).

41. The "discharge lists" which each division of a railroad company sends monthly to his fellow agents to put them on their guard against men whom he has discharged are qualifiedly privileged: *Ibid*. See *supra*, §§ 8, 19.

42. In an action for newspaper libel the judge instructed the jury that a portion of the article complained of was privileged, but permitted them to consider it with the rest in deciding from the general spirit of the article whether that part which was left to their consideration was malicious. *Held error*: *Miner v. Detroit P. & T. Co.*, 49 M. 358.

43. It is for the court to determine whether the subject-matter of a libel, and its author's interest in and relations to it, make it a privileged communication; but it is for the jury to decide as to his good faith, belief in the statement and actual malice: *Bacon v. M. C. R. Co.*, 55 M. 224.

44. The question whether a libel was not privileged cannot properly be raised in an appellate court after it has been excluded below by a ruling that publication has not been shown: *Ibid*.

(d) Interpretation of the language.

45. A published article, to test its libellous quality, must all be read together. Parts of

it cannot be severed from the rest so as to give them a meaning which the whole would not justify; and the spirit of the whole article must be determined from the occasion that led to it: *O'Connor v. Sill*, 60 M. 175.

46. A person is responsible for such meaning of his language as is most natural, and is actually by his own fault accepted under the particular circumstances. But there is no responsibility for any other meaning than that which is shown to have been intended and actually understood: *Wieman v. Mabee*, 45 M. 484.

47. Where an action of libel is based on a newspaper article casting ridicule upon plaintiff, and there is evidence tending to show that it arose out of mutual banter, and that defendant told plaintiff he was going to publish it, and that plaintiff assented, it is for the jury to find under proper instructions whether the article is really libellous, even though it would be if unexplained: *Sullings v. Shakespeare*, 46 M. 408.

48. If there is any doubt as to the meaning of the publication, so that extrinsic evidence is needed to determine its character as actionable or otherwise, it is a question for the jury, under proper instructions: *Bourreseau v. Detroit Evening Journal Co.*, 63 M. 425.

49. Where a publication is plainly libellous upon its face, or manifestly wanting in defamatory meaning, the court should so instruct the jury: *Ibid*.

50. A letter contained the following language concerning plaintiff: "It is wondered at how he can live in more than ordinary style, as he does, while having merely the honorable receipts of his agency to live upon." The letter had previously accused him of vexatious acts, and of charging unusual rates. *Held*, that this did not necessarily imply that he had embezzled or stolen, but was ambiguous, and was properly submitted to the jury: *Edwards v. Chandler*, 14 M. 471.

51. Defendant was sued for publishing of a clergyman: "Then there was that Iowa Beecher business of his which beat him out of a station at Grand Lake." This was set forth in the declaration as intended to charge adultery, and a general justification was put in. *Held*, that it was error for the court to leave such a charge to the jury as one that they might regard as not involving an accusation of adultery: *Bailey v. Kalamazoo Pub. Co.*, 40 M. 251.

52. The term "pettifogging shyster," as used in a newspaper article attacking a candidate for congress, means an unscrupulous practitioner who disgraces his profession by

doing mean work, and resorts to sharp practice to do it: *Ibid.*

And see *infra*, §§ 57, 58.

53. It is presumed that an article in the Dutch language, printed in a local Dutch newspaper of large circulation, is understood by its readers without an English translation: *Steketee v. Kimm*, 48 M. 322.

II. PLEADINGS; EVIDENCE; DAMAGES; JUSTIFICATION AND MITIGATION.

54. Where, under the allegation in a declaration for libel, no other person than the plaintiff can be presumed to be meant, the declaration is sufficient, even if it does not show by name and in precise terms the application to him of the language claimed to be libellous. The rule of certainty applicable to a declaration never required it to negative every possible implication: *Weiss v. Whittemore*, 28 M. 366.

55. If a declaration for libel alleges that the publication deprived the plaintiff of divers great gains and profits which would have accrued to him, it is sufficiently clear to indicate the kind of injury to be proved, and to sustain judgment if admitted by the defendants. But such language would not apply to an agent on a salary, and if the plaintiff were an agent it would indicate that he received part of the profits or a commission on the sales: *Ibid.*

56. In a declaration for libel a general allegation of the loss of trade is sufficient, ordinarily, without setting out the names of the customers lost, and it may be supported by evidence of such general loss: *Ibid.*

57. In giving a construction to words declared upon as libellous resort cannot be had to the innuendo, the office of which is to explain the context, not to add to it: *Lewis v. Soule*, 8 M. 514.

58. The office of an innuendo is to aver the meaning of the language published; it cannot change the import of the words, or add to or enlarge their sense; and if the meaning of the publication is plain on its face, no innuendo is needed: *Bathrick v. Detroit P. & T. Co.*, 50 M. 629; *Bourreseau v. Detroit Evening Journal Co.*, 63 M. 425.

59. The notice of justification attached to the plea in a libel suit stated that "the defendant would prove the truth of the allegations in said declaration contained." *Held*, that this evidently meant the allegations in the libels complained of, and that it was not too general: *Bailey v. Kalamazoo Publishing Co.*, 40 M. 251.

60. Where the notice of justification contained no specific averments, and was confined to the statements in the libel concerning the plaintiff, other acts not mentioned in the libel and not justified could not be proved either in justification or mitigation: *Bourreseau v. Detroit Evening Journal Co.*, 63 M. 425.

61. Where a publication complained of in its entirety as a libel charged the several offences of seduction, adultery and abortion, which, while distinct in themselves, were parts of a single and continuous transaction, it was held that the plaintiff could not, by so using the innuendo as to confine his cause of action to the charge of abortion alone, limit defendants' right to show that plaintiff's previous reputation was such that nothing in the publication could have injured it: *Bathrick v. Detroit P. & T. Co.*, 50 M. 629.

62. If a plaintiff counts upon a publication as an entirety, he cannot, by confining the innuendo to a portion of it only, limit defendants' right to justify it as an entirety and show that he had no reputation that would be injured by any part of it: *Ibid.*

63. A declaration averring injury to plaintiff's business and reputation among his Holland fellow-citizens does not put plaintiff to proof that they are citizens in the technical sense. All persons are citizens in the ordinary popular sense: *Steketee v. Kimm*, 48 M. 322.

64. It is not competent to prove distinct facts in defence that have not been made part of the issue as framed: *Bourreseau v. Detroit Evening Journal Co.*, 63 M. 425.

65. Where sworn statements, made before a justice, apparently furnish legal cause for an arrest, but the justice does not issue a warrant, it is proper, in an action for libel based on a report of the facts stated, to ask him why he did not issue it: *Bathrick v. Detroit P. & T. Co.*, 50 M. 629.

66. A physician accused of illicit intercourse with a patient sued his defamer for libel. *Held*, that he could show the patient's physical condition as bearing on the probability of the charge. But in contradicting the patient's testimony that she was weak and sick at home, the defence was properly confined to that issue, and it was not error to exclude their testimony as to her mode of employment there and her visiting elsewhere: *Maclean v. Scripps*, 52 M. 214.

67. Where plaintiff, in an action for libel, sets out the published article complained of in his declaration, such article containing charges against plaintiff, a public officer, and

also against other officers in the township, the court will restrict the evidence for the defence to the particular charges against plaintiff: *Bourreseau v. Detroit Evening Journal Co.*, 68 M. 425.

68. It is not error to allow defendant to show on what ground he based his information: *Bailey v. Kalamazoo Publishing Co.*, 40 M. 251.

69. In an action for newspaper libel an offer was made to show that the declaration was afterward published with head-lines referring to the plaintiff's attorney but not to plaintiff. Held proper to exclude proof of the head-lines: *Sullings v. Shakespeare*, 46 M. 408.

70. In an action for newspaper libel the editor was properly allowed to testify that at the request of plaintiff's counsel he had previously published a synopsis of the declaration in a similar suit brought by the same plaintiff against another paper: *Peoples v. Detroit P. & T. Co.*, 54 M. 457.

71. A newspaper article complained of as libellous did not name the plaintiff, but it was practically conceded that he was the person referred to. Held, that the exclusion of a subsequent article, naming him, when offered merely for the purpose of establishing identity and objected to as incompetent for that purpose, was not material error: *Peoples v. Evening News Assoc.*, 51 M. 11.

72. Repetition of a newspaper libel may be shown by proving the publication of the declaration containing the libellous articles in full: *Sullings v. Shakespeare*, 46 M. 408.

73. In an action for newspaper libel an article published in the same paper more than a month after the article complained of is too remote to be admissible as bearing on the care and prudence with which the paper was managed at the time of the libel; its management afterwards is immaterial: *Scripps v. Reilly*, 35 M. 371.

74. Copies of a newspaper containing specimen articles may be put in evidence to show the character it has established, as bearing on the question what degree of care and prudence was exercised in publishing an article complained of as libellous: *Scripps v. Reilly*, 38 M. 10.

75. Where an alleged libellous article is one of a series relating to a matter of public concern, defendant may introduce them all to show good faith on his part: *Scripps v. Foster*, 41 M. 742.

76. In an action for newspaper libel, the haste incident to issuing the paper, the time at which the libellous article was handed in,

and the sufficiency of the force employed on the paper for gathering the news and preparing and supervising articles for publication, may be considered as bearing on the question of the publisher's negligence: *Scripps v. Reilly*, 38 M. 10.

77. The burden of proving the negligence of a newspaper proprietor in retaining employees through whose recklessness or malice a libel has been published is on plaintiff: *Ibid.*

78. In an action for newspaper libel the motive of a subordinate in publishing the article complained of is irrelevant if not communicated to his principal, the defendant, and if a showing has been made of everything that passed between principal and subordinate before publication. And where defendant, besides testifying that he had no ill-will toward plaintiff and did not know him, and that he had put implicit confidence in his subordinate, had also been allowed to show all that took place before the publication, and the information on which he acted, there was no material error in excluding a question as to whether he had any purpose to injure plaintiff in assenting to the publication, especially where it was put by his own counsel in cross-examining him when called by plaintiff to show his control of the paper: *Maclean v. Scripps*, 52 M. 214.

79. In a civil action for libel based on a newspaper article tending to throw ridicule upon plaintiff, it is competent for defendant to show how far the facts alleged or any part of them were true, and how far their truth would leave any cause of action remaining. It is also admissible to show under what circumstances the article was prepared and published: *Sullings v. Shakespeare*, 46 M. 408.

80. In a civil action for newspaper libel, defendant, who was publisher of the paper, was properly allowed to state, on cross-examination, that the article complained of was not written by him: *Ibid.*

81. In a trial for libel based on a charge of seduction it was not clearly error to exclude the fact that the girl alleged to have been seduced committed suicide just as the trial was about to take place: *Bathrick v. Detroit P. & T. Co.*, 50 M. 629.

82. In an action for libel based on a newspaper article imputing the murder of a girl, defendant sought to justify by proving it. Held, that plaintiff, on producing evidence that tended to show that the girl was the victim of an abortion procured by some one else, was entitled to have the case submitted on that theory, and it was error to exclude a question put to a competent witness as to

whether the facts shown were inconsistent with death by abortion. *Held* proper also to cross-examine one who had testified as to the victim's relations with plaintiff, upon the impressions witness had received therefrom as to her feelings toward this person thus charged with the murder: *Peoples v. Detroit P. & T. Co.*, 54 M. 457.

83. One who sues for libel puts his previous reputation in issue, and defendant can show that even if the charge was false it probably did not injure him: *Bathrick v. Detroit P. & T. Co.*, 50 M. 629.

84. In showing that the reputation of the plaintiff in a libel suit was such that the charge could not have injured him, the defence is properly confined to the testimony of witnesses who could testify that they knew plaintiff's reputation before the charge was published: *Ibid*.

85. Where a physician complaining of a libel claims that it injures his medical character, evidence as to his medical standing becomes relevant: *Sullings v. Shakespeare*, 48 M. 408.

86. Where the declaration for libel alleges injury to plaintiff's business, the amount of his sales for the year in which the libel was published may be shown, though covering some time previous to the publication, but defendant is entitled to draw out all the facts in detail afterwards, so as to enable the jury to distinguish between the business before and after the publication: *Whittemore v. Weiss*, 88 M. 348.

87. In an action for newspaper libel questions to the editor as to the purpose of the publication and the publisher's feelings toward the libelled person, and as to what the editor, before publishing the libel, had thought of its veracity, were admissible as bearing on the questions of damages and the malice or good faith of defendant: *Peoples v. Detroit P. & T. Co.*, 54 M. 457.

88. Where a declaration for a libel published in a daily newspaper does not aver its publication in the weekly edition, an offer to prove the circulation of the weekly is properly rejected until proof is made that it was published in that edition: *Sullings v. Shakespeare*, 46 M. 408.

89. In an action for newspaper libel the editor, on testifying that on hearing that other papers which had published it had retracted, he had caused inquiries to be made as to the accuracy of the statements it embodied, should also have been allowed to testify what the result of those inquiries was: *Bathrick v. Detroit P. & T. Co.*, 50 M. 629.

90. The character and doings of private persons, not developed in legal proceedings or voluntarily made public, cannot be properly discussed in print, and for all libels, every publisher, whether an individual or a corporation, is responsible to the extent of any special damages, and any estimated damage to credit or reputation; but he is only liable to such damage to injured feeling as must inevitably be inferred from the libel itself, published in a paper of such character and circulation as his, provided he has used such precaution as he reasonably could to prevent an abuse of his columns: *Detroit Daily Post Co. v. McArthur*, 16 M. 447.

91. Every publisher in whose paper a libel appears is liable for estimated damages to credit and reputation and such special damages as may appear, and also for such damages on account of injured feelings as must be inferred considering the standing and circulation of the paper: *Scripps v. Reilly*, 38 M. 10.

92. The employment of competent editors, the supervision by proper persons of all that is to be inserted, and the establishment and habitual enforcement of such rules as would probably exclude improper items, should exempt a publisher from any aggravation of damages on account of the express malice of his subordinates, for any libel published without his privity or approval. But if it should appear that he was wanting in reasonable care to prevent abuses, he would be liable to increased damages for his own misconduct, which might fairly be regarded as identifying him with facts which he took no pains to suppress: *Detroit Daily Post Co. v. McArthur*, 16 M. 447.

93. Where there is evidence tending to show that the proprietor of a newspaper has retained employees who ought not to have been kept, and that through their recklessness or malice a libel has been published, the proprietor will be held liable: *Scripps v. Reilly*, 38 M. 10.

94. One who publishes an untrue article intended and reasonably adapted to harm the person to whom it refers is liable in such damages as may be lawfully awarded according to the determination of a jury as to the injury done and its compensation: *Tryon v. Evening News Assoc.*, 89 M. 636.

95. A publication that is libellous *per se* is presumed to be voluntary and with malicious motive, and is therefore ground for exemplary damages: *Evening News Assoc. v. Tryon*, 49 M. 549.

96. Where the publication is actionable *per se*, if maliciously published, the recovery, though the declaration alleges as damages

only a loss of trade to plaintiff, cannot properly be limited to nominal damages merely, whatever the proof as to the influence upon plaintiff's business: *Whittemore v. Weiss*, 38 M. 348.

97. Damages for a libel upon a candidate for public office are reduced to a minimum if the libel results from an honest mistake made in an honest effort to enlighten the public as to his character: *Bailey v. Kalamazoo Pub. Co.*, 40 M. 251.

98. Where it appears that a libel was published with no intent to injure the person libelled, and that all proper precautions were observed in publishing it, the recovery of damages is limited by the actual injury: *Evening News Assoc. v. Tryon*, 42 M. 549.

99. In a civil action for libel no damages are recoverable for a libel that contains no falsehoods: *Sullings v. Shakespeare*, 46 M. 408.

100. An absolute charge of crime is not necessarily wanton; and even if not privileged, or if mitigating circumstances are not shown, it does not necessarily carry every element of damages known to the law; as, where the person charged with crime ignores a portion of the charge in basing a libel suit thereon: *Bathrick v. Detroit P. & T. Co.*, 50 M. 629.

101. In an action for libel, libellous publications from the same paper, relating to other persons, may be put in evidence to show that the paper was recklessly conducted, and therefore liable to punitive damages: *Scripps v. Reilly*, 35 M. 871.

102. Where exemplary damages are sought for libel, defendant may introduce circumstances tending to show that he acted in good faith and with all proper precautions, and had good cause to believe that the statement complained of was true: *Scripps v. Foster*, 41 M. 742.

103. In an action for libel, if the communication was privileged, the plaintiff is bound to prove both the falsity of the publication and the malice in making it, and the defendant is entitled to give evidence of its truth under the general issue without special notice: *Edwards v. Chandler*, 14 M. 471.

104. Privilege is to be shown in an action for libel as a justification, after publication has been proved: *Bacon v. M. C. R. Co.*, 55 M. 224.

105. Where the defendant in a libel suit gives notice of a general justification without serving particulars, he must prove the truth of the libellous statements precisely as charged in the declaration: *Bailey v. Kalamazoo Pub. Co.*, 40 M. 251.

106. The following words were printed of a clergyman: "Then there was that Iowa Beecher business of his which beat him out of a station at Grass Lake." He sued for libel, alleging that they implied a charge of adultery. A general notice of justification was filed with the plea. *Held*, that to justify the words, the defendant must have shown a loss of position at Grass Lake upon some charge of immoral conduct affecting the plaintiff's clerical character: *Ibid*.

107. Where a libellous charge is made against a candidate for office, and there is only a technical variance between the charge and its justification, proof that the party making it honestly believed it should be received to show that there was no wrong intent: *Ibid*.

108. In an action for libel an allegation that a person has been "indicted" is supported by proof that he has been prosecuted and convicted in justice's court on information: *Ibid*.

109. But a charge made against a justice of the peace that he stole whiskey-fines is not supported by proof that he has not paid over a fine which he had imposed for an assault: *Ibid*.

110. General reputation is sufficient to justify the charge that a lawyer is a pettifogging shyster: *Ibid*.

111. A charge of bad moral character, if made generally, is not fully justified by proof of profanity and Sabbath-breaking: *Wieman v. Mabee*, 45 M. 484.

112. In business a reasonable latitude for puffing should be allowed. But this right must be so far limited that no agent, for the purpose of adding to his own sales and diminishing those of a rival agent, should be allowed to place his rival in the false position of having recommended the article supported by his opponent as better than his own, since both are supposed to be experts upon whose judgment the public will greatly rely. Nothing short of the truth of such a representation will justify its publication: *Weiss v. Whittemore*, 28 M. 366.

113. A lawyer brought an action for libel based on a newspaper article which charged him with having appropriated more than a fair share of the moneys which a client had caused to be placed in his charge just after departing for a foreign jurisdiction where his creditors could less easily trouble him. Under a plea of justification evidence was admitted of the statements of a couple of creditors who had pursued their debtor and who professed that he had intimated some suspicion as to the

safety of his funds. There was no evidence that plaintiff had done anything to have the money sent back to him, but the evidence was admitted as *res gestæ* and on the ground that the lawyer and client and the go-between who carried the money were "all together in the transaction." *Held*, error. Such declarations could not be treated as *res gestæ*, nor could the conduct of creditors among themselves out of the plaintiff's presence and not communicated to or acted on by him: *Atkinson v. Detroit F. P. Co.*, 46 M. 341.

114. A newspaper charged a city physician with causing death by the careless use of the trocar in vaccination after its use had been forbidden by the board of health. *Held*, that in an action for libel defendant might show that plaintiff had, in his presence, justified its use: *Scripps v. Foster*, 41 M. 742.

115. A libel suit was based on an article charging the plaintiff with arson to defraud insurers and with murder. *Held* proper to permit the defendant, in justifying, and as bearing upon the malice of the libel, to show that plaintiff's claim for insurance on the house that was burned was contested: *Peoples v. Evening News Assoc.*, 51 M. 11.

116. Evidence to justify statements published after the commencement of a suit for libel is not admissible: *Bailey v. Kalamazoo Pub. Co.*, 40 M. 251.

117. Good faith cannot protect a false publication, nor can one excuse himself for making a mistaken assault upon his neighbor's reputation by showing the absence of malice when, even had his charge been true, there was no proper purpose in bringing the matter to public notice: *Whittemore v. Weiss*, 33 M. 348.

118. Counter publications that are not libellous, and could have no force as a provocation, are not admissible in evidence in mitigation of damages: *Ibid*.

119. It seems that a retraction of a libellous article, published after suit is begun for the libel, cannot be considered in mitigation of damages: *Evening News Assoc. v. Tryon*, 42 M. 549.

120. The fact that an article falsely charging a candidate for an elective office with crime was copied from and credited to a paper published in an adjoining county, does not necessarily go in mitigation of damages. It must depend upon the circumstances of the particular case: *Bronson v. Bruce*, 59 M. 467.

121. Two newspapers accused a man of murder and he sued them separately for libel. The affidavit of a convict that he was present when the murder was committed was procured for

one of the cases, but it conclusively appeared that he was elsewhere at the time sworn to, and the affidavit was not used. *Held*, that though it might perhaps be admissible in the other case to show defendant's good faith, it could not be used as proof of the murder: *Peoples v. Detroit P. & T. Co.*, 54 M. 457.

LICENSE.

I. IN GENERAL.

(a) *What constitutes; nature of.*

(b) *Extent and effect.*

(c) *Pleading and evidence.*

II. REVOCATION.

License of sale of liquor, see INTOXICATING LIQUORS, §§ 2-11.

Licenses under ordinances, see CITIES AND VILLAGES, XI.

As to probate licenses, see ESTATES OF DECEASED; GUARDIANSHIP.

I. IN GENERAL.

(a) *What constitutes; nature of.*

1. A license is a permission to do something which without the license would not be allowable: *Chilvers v. People*, 11 M. 43; *Youngblood v. Sexton*, 32 M. 406.

2. A license is a permission to do some act or series of acts on the land of the licensor without having any permanent interest in it. It is founded on personal confidence, and is therefore not assignable; it may be in writing or by parol; or without consideration or subject to revocation: *Morrill v. Mackman*, 24 M. 279.

3. Where something is promised beyond a mere temporary use of the land, and the promise is not founded on personal confidence, but has reference to the ownership and occupancy of other lands, and is made to facilitate the use of those lands in a particular manner and for an indefinite period, so that the right to revoke at any time would be inconsistent with the evident purpose of the permission, the interest is something more than a license, if the proper formalities for conveyance have been observed. It may be an easement or a leasehold interest or otherwise, according to the character of the possession, occupancy or use of the promisee, the time it is to continue, and perhaps the mode in which compensation, if any, is to be made for it: *Ibid*.

4. A written agreement permitting the es-

tablishment of a dam, granting a right of flowage, providing for a perpetual use and for the settlement of damages, and containing no clause of forfeiture on default, is not a revocable license, but an absolute sale on time for credit: *Fitch v. Constantine Hydraulic Co.*, 44 M. 74.

5. Oral permission to the trustees of a church to build, upon premises contingently contracted to be conveyed to them, sheds for the convenience of attendants upon worship, was held to be a revocable license, not a lease; and a resumption of possession and fencing of the property, allowing a sufficient time after notice to remove the sheds, was lawful: *Druse v. Wheeler*, 22 M. 439, 26 M. 189.

6. Where wooden sheds had been erected on another's land after the revocation of the license to erect them, fifteen months were held to have exceeded any reasonable or necessary time for their removal: *Ibid.*

7. A land contract, unless so conditioned, does not operate as a license to use the land: *Ibid.*

8. Oral permission by the vendor of land to the vendee to take possession at any time is a mere license, revocable at pleasure so long as the terms of the sale are unfulfilled: *Gault v. Stormont*, 51 M. 636.

9. Where the vendor and vendees in a land contract enter into a parol agreement whereby the latter are allowed to remove the timber in violation of the terms of the contract, such permission amounts, so long as it remains unperformed, to a mere license: *Stickney v. Parmenter*, 35 M. 287.

10. The consent of a riparian owner to the building of a bridge on his premises amounts to a revocable license: *Maxwell v. Bay City Bridge Co.*, 41 M. 454.

11. An oral permission by the owner of land to cut timber thereon is a mere license: *Estelle v. Peacock*, 48 M. 469.

12. A parol agreement for the sale of standing timber is good as a license so far as acted upon: *Greeley v. Stilson*, 27 M. 158; *Wetmore v. Neuberger*, 44 M. 362; *Sovereign v. Ortmann*, 47 M. 181; *Spalding v. Archibald*, 52 M. 365.

13. So is a parol extension of the time allowed by a contract of sale for taking off timber: *Haskell v. Ayres*, 35 M. 89.

14. Whether a parol agreement to extend the time limited for the removal of standing timber sold was to be regarded as a license protecting the vendee until revocation, or as something more than a revocable license, *quere*; the court being equally divided: *Williams v. Flood*, 63 M. 487.

(b) *Extent and effect.*

15. A license creates an estoppel against complaining of acts done under it before revocation, or from preventing the enjoyment of the results of what was thus done: *Greeley v. Stilson*, 27 M. 158.

16. A license, like an estoppel, is limited to the fair understanding on which the parties are at liberty to act; it does not give the licensee a general authority to do what he pleases: *Ortmann v. Sovereign*, 43 M. 1.

17. Permission to a grantor to remain upon the premises after his deed is a mere license, which, even while unrevoked, does not preclude the licensor from taking actual possession of the premises generally, and putting his stock upon them. Any occupation by the grantor inconsistent with this general right in the grantee would be unwarranted; and if, while so allowed to remain, the grantor uses the land so as to make it the means of communicating an infectious disease, he will be held liable in damages to the licensor: *Eaton v. Winnie*, 20 M. 156.

18. A license to come upon one's premises, especially if in the licensor's interest, imposes upon him the duty to warn those who come of any danger in coming of which he knows or ought to know and they do not: *Powers v. Harlow*, 58 M. 507.

19. Where a tenant is obliged to cross his landlord's premises in going to and from those which he occupies, and is allowed to do so without objection, the arrangement being for the benefit of both parties, his children or members of his family may also go upon such premises to carry him his dinner or to help him: *Ibid.*

20. A tenant gave his landlord a written license to occupy as much of the premises as should be reasonably necessary in putting up an elevator. Held, that in suing the landlord for exceeding his privileges, the tenant could not show that the space to be occupied by him was marked out upon the floor; the license controlled, and the necessary space was a question for the jury: *Ives v. Williams*, 50 M. 100.

21. Permission to build a road over one's land implies authority to use it afterwards: *Harlow v. Marquette, H. & O. R. Co.*, 41 M. 386.

22. An unrevoked parol license to flow lands, given by a third person, who at the time had the right to flow, is a good defence to an action for flowing lands: *Millard v. Reeves*, 1 M. 107.

23. A mere license to enter upon land and cut timber will confer no legal right to do so,

and need not be in any particular form, but it will, until revoked, protect the licensee, so far as he has acted under it: *Wetherbee v. Green*, 22 M. 811.

24. The license implied from an oral agreement for the sale of timber or from the parol extension of time for removal under such an agreement protects the licensee in regard to all trees cut seasonably and before revocation: *Greeley v. Stilson*, 27 M. 153; *Haskell v. Ayres*, 85 M. 89; *Wetmore v. Neuberger*, 44 M. 862; *Sovereign v. Ortmann*, 47 M. 181; *Spalding v. Archibald*, 53 M. 365.

25. And when the timber is cut the title to it passes because the right thereto has become a chattel interest: *Spalding v. Archibald*, 53 M. 365.

26. Where standing timber is sold to be cut and removed by a certain date the license to enter and remove continues until that date: *Utley v. Wilcox Lumber Co.*, 59 M. 263.

27. A parol license to cut timber is binding on the licensor if executed before revocation: *Wait v. Baldwin*, 60 M. 622.

28. A licensor's actual knowledge that his consent has been acted on is not necessary to the protection of the licensee; he is bound to assume that it has: *Spalding v. Archibald*, 53 M. 365.

(c) *Pleading and evidence.*

29. A license is to be set up in the notice of special defence under the general issue: *Druse v. Wheeler*, 23 M. 439.

30. The defence of license cannot be made under the general issue in trespass; there must be a special notice: *Vanderkarr v. Thompson*, 19 M. 82; *Senecal v. Labadie*, 42 M. 126.

31. The special notice of justification under the general issue in trespass may be leave be amended so as to aver a denial: *Hopkins v. Briggs*, 41 M. 175.

32. A parol license to remove timber should be very clearly shown when relied on to avoid a forfeiture set up in defence to a bill for specific performance of a land-contract: *Stickney v. Parmenter*, 85 M. 237.

II. REVOCATION.

33. A parol license — whatever right it may give to remove erections under it — is revocable at any time: *Druse v. Wheeler*, 23 M. 439.

34. An oral permission by the owner of land to cut timber thereon is revoked by the

death of the licensor: *Estelle v. Peacock*, 48 M. 469.

35. A mere license from a wife to her husband to hold her property ceases at her death: *Bassett v. Shepardson*, 52 M. 3.

36. A license to two or more is in general revoked by the death of one of the licensees. Whether such would be the rule under the peculiar facts of this case, *quere*: *Rust v. Conrad*, 47 M. 449.

37. A license to use a road over one's premises is revoked by closing the road: *Fowler v. Hyland*, 48 M. 179.

38. A license coupled with an interest is not revocable while the interest continues; as where a license from a landlord to cross his land is necessary to the tenant's enjoyment of the premises for which he pays rent, and is therefore for the benefit of both: *Powers v. Harlow*, 53 M. 507.

39. An oral license to go upon lands to ditch is revocable by parol, and an oral agreement to give a written license if a neighbor will do likewise cannot operate as a license where, after the neighbor had done as requested, the party making such agreement declined to abide by it and forbade the digging of the ditch: *Hitchens v. Shaller*, 82 M. 495.

40. Where a petitioner for a village street across his land orally stated to the authorities that he claimed no damages, it was merely a license that would be binding only when they proceeded to take the land, and might be previously revoked by a written notice: *Turner v. Stanton*, 42 M. 506.

41. Where the vendor in a land contract has given oral permission to the vendee to take possession, such permission is revoked by the vendor's return to him of a partial payment on failing to get his wife to unite with him in the sale: *Gault v. Stormont*, 51 M. 636.

42. Where the vendor of land assigns his contract to one who knows nothing of an oral agreement between the vendor and vendee whereby the latter may remove timber in violation of the contract's terms, the agreement is revoked: *Stickney v. Parmenter*, 85 M. 237.

43. The consent of a riparian owner to the building of a bridge on his premises is revoked by his conveying the property: *Maxwell v. Bay City Bridge Co.*, 41 M. 454.

44. Where a licensee to use land has made costly improvements in reliance on the license, it *seems* that he should have adequate protection against revocation: *Ibid*.

45. A license, given by one tenant in common, with his co-tenant's consent, to a third person to cut timber, is not necessarily re-

voked by a conveyance of the licensor's interest: *Wetherbee v. Green*, 22 M. 811.

46. The owner of land gave permission through her agent to a railroad company to build its road over her land, but with the understanding that it should not thereby acquire any rights to the soil. *Held*, that the permission was not revoked and its effect was not changed by the fact that the agent, from time to time thereafter, claimed that the company was trespassing: *Harlow v. Marquette, H. & O. R. Co.*, 41 M. 336.

47. Where the owner of land has allowed the construction of a railroad over it, he is chargeable with knowledge that the road is of such a permanent nature that it cannot well be removed or abandoned: *Ibid*.

48. Where the owner of certain lands, after contracting for their sale, had given oral license to the other party, who were trustees of a church, to erect sheds thereon, but had afterwards forbidden such erection "until the contract should be carried out," and the other party privately determined not to fulfil the contract, such prohibition operated as an absolute revocation of the license. It was *held* that the use of the sheds for fifteen months afterwards without interference did not tend to show a new license or the withdrawal of the revocation: *Druse v. Wheeler*, 26 M. 189.

49. A revocation in such case made to and in the presence of one of the trustees had the same effect as if made to all: *Ibid*.

50. One has a license to enter another's business office to transact his business with him, but the license is revoked when he is ordered to leave: *Breitenbach v. Trowbridge*, 64 M. 393.

51. Revocation of a license to appropriate part of a street to private use does not immediately make the licensee a wrong-doer: *Everett v. Marquette*, 53 M. 450.

LIENS.

I. GENERAL PRINCIPLES.

- (a) *What constitutes; how created or continued.*
- (b) *How discharged, lost or waived; reinstatement.*

II. LIENS OF MECHANICS, BUILDERS AND CONTRACTORS.

- (a) *When and against what enforceable; effect; discharge.*
- (b) *Enforcement.*
 1. Proceedings generally.
 2. Appeals.

III. LIENS FOR LABOR AND SERVICES ON LOGS, ETC.

- (a) *In general.*
 1. Validity.
 2. How lost or waived.
- (b) *Enforcement.*

IV. MISCELLANEOUS LIENS.

As to lien by mortgage, see CHATTEL MORTGAGES; MORTGAGES.

As to lien of ATTACHMENT or EXECUTION, see those titles.

Taking one's property from licensee is larceny, see CRIMES, § 375.

That an hotel-keeper's lien on guest's baggage gives him no power to dispose of it, see CRIMES, § 261.

I. GENERAL PRINCIPLES.

(a) *What constitutes; how created or continued.*

1. A lien is a tie, hold or security upon goods or other things, which a man has in his custody, till he is paid what is due him: *Fitch v. Newberry*, 1 D. 1.

2. In its largest sense the word lien embraces every case in which property is charged with the payment of any debt or duty: *Bidwell v. Whitaker*, 1 M. 469.

3. A common-law lien implies that the party by whom it is claimed is either in the actual or constructive possession of the thing; and his right to detain the thing continues until his claim is satisfied; but maritime liens exist independently of possession: *Wight v. Maxwell*, 4 M. 45.

4. There must be contract, express or implied, to support a common-law lien, and, unless by express provision of statute, it never arises where no contract relations exist: *Shaw v. Bradley*, 59 M. 199.

5. A trespasser who cuts another's trees acquires no lien upon the logs for the expense of cutting and transporting them: *Gates v. Rifle Boom Co.*, 70 M. 309 (May 18, '83).

6. By signing a note or a bond one creates no lien on his property, legal or equitable: *West v. Laraway*, 28 M. 464.

7. Courts cannot create liens, but can only declare and enforce them: *Lyster's Appeal*, 54 M. 325.

8. One who has discharged a lien on goods by advancing money therefor at the request of the owner has a right to the possession of the goods till reimbursed: *Edwards v. Frank*, 40 M. 616.

9. A judgment in this state creates no lien: *Campau v. Barnard*, 25 M. 381; *West v. Laraway*, 28 M. 464, 470; *Udell v. Kahn*, 31 M. 195.

10. Charges cannot be imposed on real estate by oral agreements unless there are distinct and positive provisions enabling it to be done: *Hammond v. Wells*, 45 M. 11.

11. Equity cannot, unless allowed by statute, create a lien upon real estate to secure a personal debt, not contracted on its credit, and not charged on it by agreement: *Bennett v. Nichols*, 12 M. 22; *Perkins v. Perkins*, 16 M. 162.

As to declaring alimony a lien, see DIVORCE, §§ 216, 217.

12. An equitable lien upon real estate requires (1) a written contract identifying the property as security for the debt; or (2) such relations between the parties as will make it right and just to declare the lien; as, for example, in the case of a joint owner or *bona fide* purchaser making improvements in good faith, or in the case of partners' liens: *Kelly v. Kelly*, 54 M. 30.

13. The doctrine of equitable lien is to prevent fraud and do justice, and should never be applied where the establishment of an equitable lien would not be carrying out the intent of the parties: *Ibid*.

14. Land conveyed to a fiduciary agent by a party who was in a position rendering him an easy subject for imposition was in equity subjected to a lien for any balance that might be found due on final accounting for its full value: *Rath v. Vanderlyn*, 44 M. 597.

15. Where a party had failed to execute a mortgage as agreed, chancery enforced a lien on the property under the equitable circumstances of the case: *Williams v. Rice*, 60 M. 102.

16. An oral agreement to give a mortgage upon lands cannot be sustained as an equitable lien if uncertain in its terms: *McClintock v. Laing*, 23 M. 212.

17. Where liens on property are accompanied by a personal responsibility the creditor has a right to rely on both: *Stebbins v. Walker*, 46 M. 6.

18. Whether a lien may not continue, if so agreed, where other collaterals are taken, *quere*: *Ortmann v. Plummer*, 52 M. 76.

19. A contract not to avoid a valid lien differs from a promise to pay a third person a debt that is entirely unsecured; such a promise is binding only as between the parties to the agreement: *Hunt v. Strew*, 39 M. 368.

20. One who buys at an auction subject to liens must take the transfer subject to such

liens, notwithstanding they are not such as could have been legally enforced against the title sold: *Eames v. Eames*, 16 M. 348.

(b) *How discharged, lost or waived; reinstatement.*

That a lien is discharged by a proper tender, see TENDER, III.

21. For a case where a party, under an agreement to pay for lands by taking up encumbrances upon it, was *held* to have satisfied an encumbrance by buying it in, see *Kibbee v. Thompson*, 6 M. 410.

22. A lien for redemption from foreclosure can only be satisfied by a payment or voluntary discharge: *Powers v. Golden Lumber Co.*, 43 M. 468.

23. One who seeks to break a lien on the ground that the demand is excessive should tender what he himself considers reasonable: *Hall v. Tittabawassee Boom Co.*, 51 M. 377.

24. One who holds property under claim of a lien is under no obligation to take it to a certain point, at the owner's request, merely to enable the owner to replevy it: *Ibid*.

25. An unconditional surrender of possession or conduct showing a design to discharge the lien, or plainly inconsistent with it, usually puts an end to it: *De Witt v. Prescott*, 51 M. 298.

26. But the holder of the lien may allow the owner of the property to take it into his possession and remove it without prejudice to the lien, if so agreed: *Ibid*.

27. Nor can a lien be destroyed by a removal, without the lienor's consent, from his lienor's possession: *Ibid*.

28. All previous liens upon the land are cut off by a valid tax-title: *Robbins v. Barron*, 32 M. 86.

29. A lien once waived is permanently lost: *Au Sable River Boom Co. v. Sanborn*, 36 M. 353.

30. All liens created by implication may be waived by implication: *McMaster v. Merrick*, 41 M. 505.

31. A lien is waived if the parties entitled to it acquiesce in the action of third persons taking possession of the property on execution without notifying them of their own adverse claims: *Ibid*.

32. A lien is waived by implication if privileged and unprivileged claims are commingled in the same dealings so that the lien is not kept ascertainable without restating and charging the accounts: *Ibid*.

33. A lien is not lost by merely restating the account and deducting certain items: *Comstock v. McCracken*, 53 M. 123.

34. Equity contemplates a lien discharged by mistake as still in existence: *French v. De Bow*, 38 M. 708.

35. It seems that a complainant seeking to reinstate a lien which he has discharged by mistake on lands of which he has since been in possession might be required to account for rents and profits if the pleadings raise the question: *Ibid*.

And see EQUITY, §§ 331, 332.

II. LIENS OF MECHANICS, BUILDERS AND CONTRACTORS.

(a) *When and against what enforceable; effect; discharge.*

36. The statute providing for these liens is in derogation of the common law, must be strictly pursued, and cannot be extended beyond its terms: *Wagar v. Briscoe*, 38 M. 587.

37. Builders' liens cannot attach to public buildings unless permitted by statute: *Knapp v. Swaney*, 56 M. 345.

38. A builder's lien would not attach — under the statute prior to the amendment of 1869 — if the contract provided for securing the debt otherwise, as by mortgage upon the premises: *Barroes v. Baughman*, 9 M. 213.

39. The lien (under code of 1833, p. 406) of a mechanic or material-man, for labor or materials furnished in the construction of a building, attached only upon the interest of the person for whom it was erected; and did not encumber any pre-existing right or title of any other person: *Scales v. Griffin*, 2 D. 54.

40. If, therefore, when the lien attached, the person causing the building to be erected had no title to the premises on which it stood, but a mere right, resting in contract, to a conveyance on the performance of a condition precedent, and that right was afterwards lost by his failure to perform the condition, subsequent proceedings to enforce the lien would convey no right or title to the purchaser: *Ibid*.

41. A mechanic's lien cannot attach to a cistern built by A. for B. in C.'s ground under permission granted to B. by C.: *Eaton v. Monroe*, 63 M. 525.

42. Whether dredging out a slip and distributing the dirt for the construction of a wharf is work upon which a mechanic's lien could be based, *quere*: *Clark v. Raymond*, 27 M. 456.

43. When work is alleged to have been done under an oral contract, the terms of which are disputed, a mechanic's lien will not be sustained unless the evidence in support of it is

clear and decisive enough to satisfy all reasonable and just minds without much hesitation as to the real nature and terms of the arrangement: *Ibid*.

44. A mechanic's lien attaches to an entire interest of the debtor in premises considered only as real estate, and not to chattels separated from it: *Wagar v. Briscoe*, 38 M. 587.

45. A mechanic's lien for building materials can arise only on a contract made by the owner, part owner or lessee of the land to be affected; and cannot attach to anything besides his actual interest: *Ibid*.

46. One cannot at the time of contracting for building material, and by that act alone, impose a mechanic's lien against land upon which the building is to be put up, if he had then no legal or equitable title to it: *Ibid*.

47. The contract must relate to and be performed upon the lands against which the lien is sought to be enforced. No lien arises under H. S. § 8377 in favor of parties who merely sell machinery or materials which may or may not go into a building, as the purchaser may determine: *Stout v. Sawyer*, 37 M. 313; *Coleman v. Stearns Manuf. Co.*, 38 M. 30, 35.

48. The contract relation prescribed by the statute is a necessary prerequisite to the lien, and it must distinctly exist before, or at all events at the time when, the lien is sought to be instituted: *Willard v. Magoon*, 30 M. 273.

49. Where husband and wife had been living in a building owned by her which was destroyed by fire, and he bought articles for repairing the building in his own name and on his own credit, it was held that no privity of contract existed between the wife and the vendors so as to authorize a lien against her property: *Ibid*.

50. Prior to the amendment of C. L. 1871, § 6789, by act 258 of 1879 (H. S. § 8377), a wife's land was not bound for improvements made upon it on the credit of her husband, even though with her knowledge and consent: *Ibid*.; *Newcomb v. Andrews*, 41 M. 513; *Morrison v. Berry*, 42 M. 389.

51. A builder's lien will not attach to any interest in real estate which defendant did not have when materials began to be furnished (H. S. § 8377); nor will filing notice of the lien operate retrospectively; the lien will not, as against *bona fide* purchasers, attach to property that has been transferred to them before the filing of notice: *Sisson v. Holcomb*, 58 M. 634.

52. A lien will not attach to a debtor's homestead for building a house thereon under a written contract for furnishing material and building a dwelling-house, which does not in any way describe or specify what land the

building is to be erected upon: *Hammond v. Wells*, 45 M. 11.

53. A mechanic's lien in favor of the vendor of materials cannot be predicated merely on the purchaser's statement that he has a house and is building an addition to it and wants the materials for that purpose: *People v. McAllister*, 49 M. 12.

54. A mechanic's lien does not preclude the general owner from replevying the goods as against a stranger: *Bodine v. Simmons*, 88 M. 682.

55. A mechanic's lien is terminable on redemption, and therefore gives no fixed right of possession for any particular period and does not concern third persons if not asserted by the parties: *Ibid*.

56. A builder under a contract cannot, as against the owner of the building, retain possession of it after the time has expired for the performance of the contract, and after he has ceased work, to enforce payment of the contract price: *Beller v. Stange*, 27 M. 812.

57. A vendor's lien secured by a duly recorded chattel mortgage takes precedence of a mechanic's lien for repairs subsequently done at the purchaser's request: *Denison v. Shuler*, 47 M. 598.

58. A tender, sufficient in amount, will discharge a mechanic's lien for the repair of personal property; and, if not accepted, the creditor must thereafter rely upon the personal responsibility of his employer: *Moynehan v. Moore*, 9 M. 9.

(b) Enforcement.

1. Proceedings generally.

As to jurisdiction by amount, see *EQUITY*, § 81.

59. A title secured under the mechanic's lien law is purely statutory, and its validity depends on an affirmative showing that every essential statutory step in the creation, continuance or enforcement of the lien has been duly taken: *Wagar v. Briscoe*, 88 M. 587.

60. One who seeks to enforce a mechanic's lien for material furnished is required by statute to file an affidavit of the amount due within thirty days after furnishing the material, and also proof of service of notice of the lien. If he does not, it is provided that the lien shall cease as to all persons except the owner of the premises. It is further provided that the lien shall not continue more than sixty days after the filing of the affidavit of amount due, unless proceedings to enforce the lien have been begun. *Held*, that if no affi-

davit is filed at all, the lien will be lost after ninety days have passed since the material was supplied: *Comstock v. McEvoy*, 52 M. 824.

61. The filing of a bill or petition, not the service of process, is the beginning of suit in the meaning of the statute which requires proceedings to be begun within sixty days: *Sheridan v. Cameron*, 65 M. 680 (April 28, '87).

62. In proceedings by subcontractors to enforce a mechanic's lien, the original contractors must be brought in as parties, since the contract relation and state of accounts between the defendant and the original contractors, and between the original and subcontractors, must be adjudicated before the lien can be established, and the rights and liabilities of the parties be ascertained: *Kerns v. Flynn*, 51 M. 573.

63. The objection that a petition for the enforcement of a mechanic's lien does not implead necessary parties may be taken in the answer thereto, or at the hearing; and it is not lost by putting in an answer after demurring: *Ibid*.

64. Under C. L. 1871, §§ 6789-94 (see H. S. §§ 8377-82), for the enforcement of mechanics' liens upon real property, a declaration that the contract was made with a particular party, and subsequently fully performed, would not comprehend the substance of the facts involved in the idea of a lien under said law, under which no lien will attach unless the contract be with the owner, part owner, or lessee. Simple performance of the contract is insufficient. It is a fatal defect not to show the interest of the contracting party in the land, and the defect will not be cured by an admission of ownership on the part of the respondent. Every fact essential to jurisdiction must appear on the record: *Clark v. Raymond*, 27 M. 456.

65. In proceedings under the statute to enforce a lien, the existence and terms of the contract upon which the alleged lien is based must be distinctly and affirmatively proved. As the statute looks to somewhat summary proceedings in relation to real property, all matters of substance, and proceedings essential to the security of rights and titles, should be strictly adhered to: *Willard v. Magoon*, 80 M. 273.

66. In setting up the respondent's title to certain lands, in a petition for the enforcement of a mechanic's lien against the lands for materials supplied, it should be made to appear that the respondent had some interest in the lands at the time the materials were supplied or when the certificate of the lien was filed, and it is not sufficient to set forth

only the state of the title at the point of time when the petition was filed: *Ibid.*

67. A petition in chancery filed to enforce a mechanic's lien need not contain a prayer for process: *Sheridan v. Cameron*, 65 M. 690 (April 28, '87).

68. Though a purely statutory lien must conform exactly to the statutory conditions, yet when it once attaches and is put in process of foreclosure, the proceedings, while in part definitely fixed, are largely left to the general course of practice, and no strained construction should be used to defeat them: *Ibid.*

69. The chief purpose of the notice *lis pendens* required by the statute is to bind subsequent interests. *Semble* that it is unnecessary as against the original parties to the bill: *Ibid.*

70. In proceedings to enforce a mechanic's lien upon realty, an answer should be put in by the defendant so that an issue may be properly framed: *Roberts v. Miller*, 33 M. 289.

71. Prior to the amendment of 1879 (see H. S. § 8882) the bill or petition though sworn to was not evidence, and therefore a sworn averment of service upon defendant of notice of the filing of the lien with the register of deeds did not cure the want of proof thereof, unless the answer admitted it: *Ibid.*

72. The complainants have the burden of proving on the trial their compliance with all that the statute requires for giving them a lien on the defendant's premises: *Ibid.*

73. The final decree in proceedings sustaining a mechanic's lien ought expressly to adjudge the existence of contract relations between the parties, and the establishment of the alleged lien upon the property described: *Willard v. Magoon*, 30 M. 273.

74. A mechanic's lien enforced against a simple equity must be confined to that, and a sale of the equitable interest must be subject to the rights of the legal owner: *Wagar v. Briscoe*, 38 M. 587.

75. Notice of a sale for the enforcement of a mechanic's lien must be posted and published as in cases of execution sales of real estate, except that twelve days must intervene between the completion of the act of notification and the time of sale: *Ibid.*

2. Appeals.

76. Prior to act 84 of 1873, no appeal lay from statutory proceedings to enforce the liens of mechanics, etc., who, by contract with the owner, etc., of lands, had furnished labor or materials for constructing or repairing any building, etc., upon such lands: *Clark v. Raymond*, 26 M. 415.

77. The supreme court has no jurisdiction to review proceeding to enforce a mechanic's lien under H. S. ch. 290, except by virtue of H. S. §§ 8409-8411, which excludes any other mode of review, or rule or course of proceeding on appeal, than is provided by law in relation to appeals in ordinary chancery cases; the finding of a jury, therefore, in such proceedings, instead of being decisive as at common law, is a mere provisional and assistant inquisition analogous to a verdict or a feigned issue in chancery, and, as the court may ignore it, points raised upon the charge to the jury, rulings, etc., will not be considered: *Willard v. Magoon*, 30 M. 273.

78. Without a proper authentication of what seems to have been returned and treated as the evidence in proceedings to enforce a mechanic's lien upon lands, the supreme court will not hear an appeal therefrom; the defect is not cured by a stipulation of the solicitors; the solemn judgments of courts will not be disturbed on records made for them by the counsel or attorneys: *Roberts v. Miller*, 31 M. 78.

79. The record on an appeal should contain a copy of the testimony duly certified by the register as a true copy of the testimony filed in the cause: *Ibid.*

80. In reviewing statutory proceedings in chancery to enforce a mechanic's lien in which the complainant obtained a verdict, the supreme court will not be disposed to disturb the result where the case depends mainly on the weight of oral testimony, and the testimony is irreconcilably opposed, and the trial court saw the witnesses examined: *Begin v. Henderson*, 50 M. 468.

III. LIENS FOR LABOR AND SERVICES ON LOGS, ETC.

As to recovery of compensation for running and booming logs, etc., see *WATERS*, VIII, (b).

(a) *In general.*

1. Validity.

81. Act 185 of 1873, providing for a lien for labor on lumber and logs, criticised as crude and incomplete: *Clark v. Adams*, 33 M. 159; *Shaw v. Bradley*, 59 M. 199.

82. Act 145 of 1881 (H. S. §§ 8412-8427), establishing a lien for labor and services on logs, etc., is remedial, and was enacted to provide additional security for the laborer; and it should be liberally construed to effectuate that object: *Shaw v. Bradley*, 59 M. 199.

83. It is competent for the legislature to provide for security by way of a lien in behalf of a laborer, and also to provide a remedy for the enforcement of such lien by attachment, in cases where the possession of the property upon which the labor is performed is not retained by the person performing such labor: *Ibid.*

84. Whether the act of 1881, in declaring that the word "person" or "persons" in the first section thereof (H. S. § 8412) shall be interpreted to include cooks, blacksmiths, artisans and all others usually employed in performing such labor and services, would operate to give a lien to cooks, blacksmiths, etc., between whom and the owner there exist no contract relations, *quere: Ibid.*

85. Such an objection to the validity of the statute, and the further objection that it provides for seizure without service of process of any kind, cannot be raised by defendants shown to have been in contract relation with defendants, and to have been personally served with the process by which the suit was begun: *Ibid.*

86. Said act of 1881 gives laborers for a contractor a lien against the owner of the logs, though there is no privity of contract between such laborers and owner; and in so doing the act is constitutional: *Reilly v. Stephenson*, 62 M. 509.

87. An independent contractor, that is, one who enters into a contract with the owner of logs to drive and deliver them, is entitled to a lien under act 145 of 1881: *Shaw v. Bradley*, 59 M. 199.

88. The lien for cutting logs provided by act 185 of 1878 could not be enforced as against those who had purchased from the debtor without notice of the claimant's lien as shown by his petition on file or by his actual possession: *Haifley v. Haynes*, 37 M. 535.

89. H. S. § 2035, prior to its amendment by act 66 of 1887, did not give a lien for removing obstructions upon a stream that required the aid of artificial means in running the logs by means of dams, etc.: *Kroll v. Nester*, 52 M. 70; *Shaw v. Bradley*, 59 M. 199.

90. A contract for manufacturing lumber from logs was held to give a lien for the saw-bill, notwithstanding a provision for the payment of the bill for sawing "as often as once a month after the lumber is delivered out of said mill:" *Chadwick v. Broadwell*, 27 M. 6.

91. A saw-mill was leased without rent, but the lessees were to saw all logs furnished by the lessor and ship and season lumber as ordered. This agreement was to be in force through the whole period of the lease. *Held*,

that this contract evidently did not contemplate a lien, since (a) the amount of work agreed for was indefinite and consisted of various items, and the rental value could not well be apportioned on it; (b) work was to continue until the end of the lease, when the lessee would be bound to quit and could not remain on the premises to enforce his lien; and (c) the obligation to ship was unlimited and might exhaust the whole of the lumber: *McMaster v. Merrick*, 41 M. 505.

92. Where a contract for the sale of stumpage permits the vendee to have the logs manufactured, and consequently to create a lien upon them for the labor, the vendor, in subsequently dealing with the vendee's assignee with regard to the sawed lumber, is bound at his peril to ascertain whether the lien has been satisfied or waived, or whether the assignee has such possession of the lumber as to warrant the inference that no lien then exists; and he cannot claim the rights of a *bona fide* purchaser under the assignee's mere formal oral transfer to him of the lumber in consideration of a pre-existing debt for the purchase price of the logs: *Chadwick v. Broadwell*, 27 M. 6.

93. Where a contract for sawing logs provided that the quantity sawed was to be determined by the sales or inspection bills at the place of shipment, it was held that any possession that might be taken by purchasers of the sawed lumber, as the inspection proceeded, must be regarded as only inchoate and conditional until payment should be made for the sawing, and that purchasers participating in the transaction and necessarily apprised of the lien were not wronged by its being insisted upon: *Ibid.*

94. Boom companies have a lien for their services in breaking jams and driving logs whose owners have not put on a sufficient force to do it, not only under the statute relating to such companies (H. S. § 3922), but under the general act relating to log-driving: *Hall v. Tittabawassee Boom Co.*, 51 M. 377.

95. A boom company's statutory lien for running logs is acquired if the work is done by one who has contracted with the company to do it as the company's agent, and who is to be paid a gross sum for the job: *Ibid.*

96. In an action involving the existence of a lien for services, a full showing should be had as to the items that go to make up the claim, and full cross-examination should be permitted. The reasonableness of the claim is for the jury, and they cannot be instructed as to their conclusions thereon: *Ibid.*

97. In replevin for logs on which defendant

claims a lien for driving them and for storage, the jury cannot be instructed that the charge for storage should be proportioned to the length of time they were held, as this involves considerations of fact, and it might be unjust that an owner who should be favored with an early delivery of his property should also be favored with the smaller charges: *Ibid.*

Prospective lien as consideration, see CONTRACTS, § 205.

2. How lost or waived.

98. By allowing sale and delivery of lumber upon which he has a lien, to purchasers ignorant of his rights, a sawyer waives his lien to the extent of such sales: *Chadwick v. Broadwell*, 27 M. 6.

99. A lien upon lumber for the saw-bill was not lost by the removal of the lumber from the mill-yard to a distant place of shipment, where, under the agreement, the possession remains in the sawyer until inspection at such place: *Ibid.*

100. Where a boom company has taken time-acceptances for its claim for services upon rafts of logs delivered to the owners thereof, such owners have a right to demand and receive the residue of their logs, released from any lien for services upon the rafts delivered. There being no agreement or understanding that the logs on hand might be retained as security for a future payment of a demand not then payable, such an agreement cannot rest in implication. And the lien being thus once lost could not be revived by the maturing of the acceptances: *Au Sable River Boom Co. v. Sanborn*, 36 M. 358.

101. Whether, as between a boom company and the original owners of logs rafted by it, there could be any question that the taking of time-acceptances for its claim for services would be a waiver of any lien therefor on logs remaining in their custody, there could be none as between the company and a third person to whom the property has been sold without notice of any claim for services in respect to logs previously delivered. If one by his purchase acquires an immediate right to remove his property he cannot lose it by any subsequent default of his vendor: *Ibid.*

102. Where a log-owner demands all his logs from a boom company which claims a lien for its services in driving them, the latter does not lose its lien by detaining more of the logs than is necessary to preserve it, though such a detention may possibly give ground for an action: *Hall v. Tittabawassee Boom Co.*, 51 M. 377.

103. Where the logs of an individual owner have become intermingled with those in the charge of a boom company without his consent, but without the fault of the company, the latter acquires a lien for its services in driving them which it does not waive by refusing to deliver them to the owner on demand, unless he tenders not only a reasonable compensation for the services, but enough to cover the cost of separating his logs from the rest: *Ibid.*

104. A lienholder cannot be said to refuse to state the amount he claims when he merely refuses to vary from schedule rates of which both parties have knowledge: *Ibid.*

(b) Enforcement.

See, also, WATERS, VIII, (b).

That these liens do not give jurisdiction to equity, see INJUNCTIONS, § 40.

105. Act 185 of 1873 authorized no personal judgment as for damages, but simply a proceeding *in rem* to enforce a lien, and those who avail themselves of it must show that they have strictly followed its provisions: *Clark v. Adams*, 83 M. 159.

106. But act 145 of 1881 (H. S. §§ 8412-8427) authorizes a personal judgment as well where a lien is found to exist as where the amount found due is not a lien upon the property: *Shaw v. Bradley*, 59 M. 199.

107. Under said law of 1881 an owner's logs cannot be seized to pay the debt of his contractor or other person without reasonable notice and an opportunity of contesting the suit: *Reilly v. Stephenson*, 62 M. 509.

108. Proceedings under act 185 of 1873 are special and must conform strictly to the statute; the affidavit for attachment, therein provided for, is jurisdictional, and if it omits any material allegation which the statute requires, the writ will afford no protection to the officer executing it, and he will be guilty of conversion for seizing property upon it: *Woodruff v. Ives*, 34 M. 320.

109. Where an affidavit for writ of attachment under said act of 1873 alleges that plaintiffs performed labor upon the logs sought to be attached, but fails to specify the kind of labor or services performed, or to show that it was labor or services of the specific character prescribed by the statute, it is fatally defective. The defect cannot be waived by appearing and pleading to the merits: *Ibid.*

110. A judgment enforcing a lien upon logs for labor done thereon (H. S. §§ 8412-8427) was affirmed by the equal division of the supreme court, which did not agree that

the affidavit filed by the claimants was sufficient to sustain the judgment, if not objected to before. The objections considered fatal were that it did not allege that the parties represented by plaintiff had united their claims, or that they had designated plaintiff as their agent or attorney to enforce the lien, or that the respective sums claimed were less than \$100 each, or as to who was the owner of the logs: *Babcock v. Cook*, 55 M. 1.

111. An affidavit under H. S. § 8419 showed that the logs were separate lots belonging to different owners, and that some of the labor mentioned was not such as entitled plaintiff to a lien, and it did not show that the labor not conferring a lien was not the only labor performed upon the logs of the objecting defendant. *Held*, that the affidavit was sufficient: *Pack v. Simpson*, 70 M. 185 (May 8, '88).

112. Under H. S. § 8419 the affidavit need not show how much work was done on each lot of logs, where the work was done for a contractor on four lots, all of which were attached: *Ibid*.

113. Under said § 8419 an affidavit which states that "the said plaintiff, and each of said claimants, have filed a claim for the amount due each," sufficiently avers the filing of a statement of the lien: *Ibid*.

114. An affidavit under said § 8419 need not describe the logs as the property mentioned in the annexed writ, where the writ and affidavit described the logs by certain marks and as being in a certain drive: *Ibid*.

115. A petition under H. S. § 2038 to enforce a lien on logs is fatally defective if it does not allege the jurisdictional fact that they are within the county where the suit is begun: *Pine Saw-Logs v. Sias*, 48 M. 356.

116. Where such petition alleged that the petitioner had run the logs to a certain boom, *held*, that the court could not take judicial notice that the boom was within the county where the suit was begun so as to cure the omission of the averment that the logs were within the county and therefore subject to the jurisdiction: *Ibid*.

117. In proceedings to enforce a lien on logs the appearance and plea of a claimant does not waive previous jurisdictional defects in the proceedings, where the judgment is in form against the logs and there is no judicial determination that the claimant is the sole owner of them: *Ibid*.

118. An allegation in a declaration under act 185 of 1873 that the plaintiffs, on a day named, "caused to be mailed to each of said defendants a notice of the filing of said peti-

tion or statement, as required by the act aforesaid," is not an explicit statement of the service of such notice, "by depositing the same in the postoffice directed to the owner of the logs or timber, his agent or attorney, at his or their place of residence, and paying the full postage thereon," which is the mode of service by mail expressly specified by the statute: *Clark v. Adams*, 33 M. 159.

119. The officer's return should show that the owner of logs attached could not be found in his balliwick, as a preliminary fact to authorize substituted service upon the agent of such owner: *Noyes v. Hillier*, 65 M. 636 (April 28, '87).

120. Where execution in an attachment suit brought to enforce a lien for labor on logs has been returned unsatisfied because the defendant owners, who were duly served in the suit, have removed the logs attached beyond the officer's reach, plaintiff may recover the amount of his lien in trover or case against such owners: *Goodrow v. Buckley*, 70 M. 513 (June 8, '88).

IV. MISCELLANEOUS LIENS.

121. No common-law lien upon personal property manufactured attaches where the manufacturer parts with the possession in the first instance after the manufacture: *Smith v. Greenop*, 60 M. 61.

122. A lien for the keep of a horse is subject to that of a valid, prior chattel mortgage, and the mortgagee need not tender the amount thereof to entitle him to possession: *Reynolds v. Case*, 60 M. 76.

123. A clerk or agent whose wages are measured by profits has no lien on property in his possession as against a chattel mortgage given by his employer, but if he were a partner he would have a lien: *Wilcox v. Matthews*, 44 M. 192.

124. Brokers who, without consideration therefor, merely express a willingness to hold until it rises, wheat bought for their principal, lose no existing lien upon it: *Stebbins v. Walker*, 46 M. 5.

125. One who contracts to drive logs to a certain point at a fixed rate is bound to discharge any lien for tolls imposed by a river-improvement company: *Johnson v. Cranage*, 45 M. 14.

126. Whether one who sells merchandise to another on credit can establish a lien upon the proceeds of sales made by the debtor by stipulating that they shall be held in trust for him, *quere*: *Adriance v. Rutherford*, 57 M. 170.

127. A vendee who has paid the purchase

money punctually has a lien, as against the vendor, analogous to that of a vendor against a vendee who has not paid the purchase money: *Payne v. Atterbury*, H. 414.

As to lien of vendor, see SALES, IV, (e); VENDORS, V.

128. A carrier has a lien on the cargo for the freight earned: *Strong v. Grand Trunk R. Co.*, 15 M. 206, 216.

Further as to lien for freight, see CARRIERS, §§ 95, 96, 98.

129. It seems that the *guardian ad litem* of an infant litigant or his solicitor has a lien upon the infant's funds in court: *Sheahan v. Wayne Circuit Judge*, 42 M. 69.

As to lien of attorney, see ATTORNEY, V, (c).

As to lien of complainant in interpleader, see COSTS, § 177.

As to lien for finding LOST GOODS, see that title, §§ 5, 6.

As to liens on vessels for supplies, etc., see SHIPPING, IX.

As to lien on property on leased premises, see LANDLORD AND TENANT, II, (e).

As to liens for taxes or for taxes paid, see TAXES, VI, (c), (d), 3.

LIMITATION OF ACTIONS.

I. GENERAL PRINCIPLES; CONSTRUCTION AND EFFECT OF THE STATUTE.

II. WHEN THE STATUTORY PERIOD COMMENCES TO RUN.

(a) *In general.*

(b) *In cases of fraudulent concealment.*

(c) *In cases of mutual account.*

III. WHEN THE STATUTORY BAR BECOMES COMPLETE.

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(c) *In case of non-residence or absence.*

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As to equitable bar, and application of the statute by analogy in chancery, see EQUITY, §§ 591-604.

As to limitation of time for foreclosure of mortgage, see MORTGAGES, X, (a), 2.

As to stipulated limitation of time to sue on policy, see INSURANCE, §§ 281-287.

As to limitation of time for bringing error, case made or *certiorari*, see ERROR, §§ 116-119; CASE MADE, §§ 32, 33; CERTIORARI, § 2.

I. GENERAL PRINCIPLES; CONSTRUCTION AND EFFECT OF THE STATUTE.

1. The statute of limitations is favorably regarded by the courts as one of repose as well as of presumption, and as affording security against stale claims; and it is not to be defeated by undue strictness of construction, but must be fairly construed to give effect to the legislative intent: *Ten Eyck v. Wing*, 1 M. 40; *Jewett v. Petit*, 4 M. 506; *Jenny v. Perkins*, 17 M. 28; *Gorman v. Newaygo Circuit Judge*, 27 M. 188; *Palmer v. Palmcr*, 36 M. 487; *Toll v. Wright*, 37 M. 93; *Proctor v. Bigelow*, 38 M. 282.

2. Statutes of limitation have regard specially to the laches of the owner, and they deny him a remedy for the recovery of his rights because he has failed to pursue them within a reasonable time: *Showers v. Robinson*, 43 M. 502.

3. Where there is no express exception to the statute the court can create none: *Ten Eyck v. Wing*, 1 M. 40.

4. If there is no saving in a statute as to absentees, *feme covert*s, or residents beyond seas, the court will make none: *Beaubien v. Beaubien*, 23 How. (U. S.) 190.

5. The bar of the statute must be as broad as the remedy was which it extinguishes: *National Copper Co. v. Minnesota Mining Co.*, 57 M. 83.

6. Statutes of limitation are construed to operate prospectively only unless their terms clearly indicate a different intent: *Harrison v. Metz*, 17 M. 377.

7. Act 86 of 1842, fixing limitations as to actions of ejectment brought by or against those claiming under tax-deeds, applied only to conveyances on sales for delinquent taxes assessed thereafter: *Porter v. Van Dyke*, 31 M. 176.

8. H. S. § 8736, limiting the time within which actions upon judgments can be brought, applies only to judgments rendered after the act took effect: *Harrison v. Metz*, 17 M. 377.

9. But it applies to causes of action existing at the time of its passage (see CONSTITUTIONS, § 210): *Parsons v. Wayne Circuit Judge*, 37 M. 237.

10. Act 145 of 1871 (H. S. § 8718), whereby the statute is made to run against Canadian as well as domestic creditors, *held* applicable to causes of action already existing (see CONSTITUTIONS, § 209): *Krone v. Krone*, 37 M. 308.

11. Whether, by § 3 of the repealing act contained in R. S. 1838, it was intended to continue in force the provisions of the acts of limitation repealed by that act, where the time had "begun to run," or whether the time prescribed in R. S. 1838 was intended as the period at the expiration of which the suits should be barred, *quere*: *McLean v. Barton*, H. 279.

12. The act of May 15, 1820, limited the time for bringing ejectment, for causes of action thereafter accruing, to twenty years. An act of Nov. 15, 1829, limited the period to ten years, where the cause of action *had then accrued*. R. S. 1838 repealed these acts and substituted a new limitation of twenty years, with a proviso, however, that causes of action already accrued should not be affected, but be determined by the law under which the same *accrued*. In ejectment commenced in 1840 for a cause of action which accrued in 1822, it was *held*, in view of the various provisions of R. S. 1838 relating to the same subject, that the action was barred by the act of 1829: *Lastly v. Cramer*, 2 D. 307.

13. Defendant went into actual possession of lands, under a tax-title, in August, 1842, and by the act of Feb. 17, 1842 (Laws of 1842, p. 133), the time for bringing action of ejectment in such case was limited to ten years. This act was repealed by R. S. 1846, but it was held that § 9 of chap. 139 of those statutes continued it in force as to all rights of action which had accrued under it, and an action commenced more than ten years from the time defendant entered in possession was barred: *Perry v. Hepburne*, 4 M. 165.

14. Act 227 of 1863 (H. S. § 8693), amending the limitations of actions for the recovery of lands, does not apply to causes of action that accrued before Jan. 1, 1864, the date when said statute took effect. A right of action that accrued before that date would be controlled by the statute in force at the time (see CONSTITUTIONS, §§ 202, 203): *Price v. Hopkin*, 13 M. 318; *Ludwig v. Stewart*, 32 M. 27; *Stambaugh v. Snoblin*, 32 M. 296.

15. The provision of H. S. § 8706, that the rights of parties are to be determined by the law in force when the right of action accrued,

relates not to the subject of disabilities, but to the time when the statute became a law: *King v. Merritt*, 67 M. 194 (Oct. 13, '87).

16. The statute of limitations adopted by the governor and judges, May 15, 1820, continued in force as adopted until repealed in 1838; and its provisions ran against the claims of persons who were, at the time the cause of action accrued, out of this state, but not without the United States, and who had not, from the time of the accruing of said cause of action, come within the state: *Hulburt v. Merriam*, 3 M. 144. *Contra*, *Pease v. Peck*, 18 How. (U. S.) 595.

17. Statutes of limitation will not operate against the state without express words declaring such to be the purpose of the act: *Crane v. Reeder*, 21 M. 24.

18. The state is bound by statutes of limitation, and can give no title by selling, after twenty years, an old tax-bid for premises that have meanwhile been held adversely long enough to bar ejectment for them: *Chamberlain v. Ahrens*, 55 M. 111.

That H. S. § 8698 limits actions for recovery of dower, see DOWER, § 80.

That the general provisions of the statute of limitations apply to claims against ESTATES OF DECEDENTS, see that title, § 215.

19. If one's title has become perfected under the statute of limitations so that it cannot be questioned in a suit brought against him, neither can it in a suit brought by him: *Toll v. Wright*, 37 M. 93.

20. Where, by reason of an adverse possession of lands for twenty years, the occupant has acquired a perfect right in the law to defend his possession, he has for all practical purposes a title, and may maintain suits upon it against parties afterwards found upon the land: *Bunce v. Bidwell*, 43 M. 542.

21. A surety on a joint note, whose liability is barred by the statute of limitations, can waive his privilege if he chooses and take up the note and enforce it against his principal, if the latter has kept it alive against himself: *McClatchie v. Durham*, 44 M. 435.

22. A defendant in possession is not estopped from taking advantage of the statute of limitations by any neglect to speed the cause: *Dubois v. Campau*, 37 M. 248.

II. WHEN THE STATUTORY PERIOD COMMENCES TO RUN.

(a) *In general.*

23. In computing the ten years within which an action upon a judgment must be brought to avoid the statute of limitations,

the day of entering the judgment is excluded: *Warren v. Slade*, 23 M. 1.

24. The statute of limitations runs against an action on the covenants of a deed from the date of the deed, where the covenants are broken as soon as the deed is given; as where the grantor has no title: *Matteson v. Vaughn*, 38 M. 873; *Vaughn v. Matteson*, 39 M. 758.

25. *Assumpsit* on a covenant of seizin is barred within six years from the time the covenant was made if the grantor had no title: *Sherwood v. Landon*, 57 M. 219.

26. A right of action in *assumpsit* upon a covenant against encumbrances is barred in six years, and does not pass with the land: *Guerin v. Smith*, 62 M. 369.

27. Upon certificates of deposit, and obligations payable on demand, when not excepted by H. S. § 8716, the time runs from the date thereof: *Tripp v. Curtenius*, 36 M. 494.

28. The statute runs from delivery of a note payable on demand; and in the case of a note payable thirty days after demand it runs from the expiration of thirty days after delivery: *Palmer v. Palmer*, 36 M. 487.

29. As against a receipt of notes for collection, the statute does not begin to run until an accounting has been called for: *Kimball v. Kimball*, 16 M. 211.

30. Receipt for money and personal property to be accounted for. *Held* that, as to the personal property, the statute did not begin to run until after demand, but the money was to be considered due immediately: *Ibid*.

31. Receipt for money to be paid on a demand held by another. Suit brought thereon fourteen years after its date. *Held*, that the receiptor was bound to pay over the money within a reasonable time, and in the absence of all explanation the reasonable time must be deemed to have elapsed more than six years before suit, and therefore the action was barred: *Ibid*.

32. Where an agreement to provide for one by will is binding on an estate the statute of limitations does not begin to run until after the death of the person executing it, and under H. S. § 8722 the period of limitation, in case of the death of the party liable, is extended thirty days beyond the six years otherwise allowed: *Sword v. Keith*, 31 M. 247.

33. An administrator's claim for moneys paid by him to redeem lands for the estate dates from the payment, and the statute begins to run at that time: *Goodrich v. Leland*, 18 M. 110.

34. The statute runs in favor of one who converts property from the time of the con-

version, although another afterwards intermeddles with the property in such a way as to make him a joint wrong-doer with the person guilty of the original conversion: *Kniesly v. Stein*, 52 M. 880.

35. A contract for cutting logs into lumber and shingles had been in force for several years, and the parties in the last year of cutting figured up their account for the whole period. *Held*, in an action for the balance due on the contract, that the statute of limitations did not begin to run until the last item of the account for that year: *Burch v. Woodworth*, 68 M. 519 (March 2, '88).

36. Where a person goes into the service of another upon an indefinite promise of payment, and no price and no period is fixed, the bargain and service are alike continuous, and the statute of limitations does not begin to run against the claim until the service is concluded; the right of action at the close of the service is an entire right and applies to the entire service, and the employee is entitled to claim for the whole amount of all unpaid wages for all the service rendered under the agreement: *Carter v. Carter*, 36 M. 207.

37. A cause of action accrues to set the statute of limitations in motion, at least where no delay is contemplated, as soon as the creditor, by his own act and in spite of the debtor, can make his demand payable: *Palmer v. Palmer*, 36 M. 487.

38. Where a demand is a necessary preliminary to an action, it is barred unless made within the period of the statute of limitations, and the right of action falls with it: *Ibid*.

39. If B. borrows from A. to lend to C., the running of the statute of limitations on C.'s debt to B. is not postponed to the date of the enforcement of B.'s liability to A.: *Howard v. Pontiac Presbyterian Church*, 51 M. 125.

40. Where a contract for the sale of machinery contemplates that it shall be tested and put in running order, a cause of action does not arise upon the warranty therein until a reasonable time has been allowed for the necessary tests; and the time taken by the parties in trying to make the machinery fulfil the conditions of the contract is a proper criterion as to what is reasonable: *Felt v. Reynolds R. F. E. Co.*, 52 M. 602.

(b) *In cases of fraudulent concealment.*

41. The statute of limitations does not apply against a cause of action fraudulently concealed, before the fraud is discovered: *Tompkins v. Hollister*, 60 M. 470.

42. The fraudulent concealment of a cause of action which, under H. S. § 8724, prevents the running of the statute of limitations may be a concealment of law as well as of fact: *Ibid*.

43. There can be no "fraudulent concealment," within the meaning of the statute of limitations, of matters that are of record and of which plaintiff must be presumed to have knowledge: *Robert v. Morrin*, 27 M. 306; *Me-costa Supervisors v. Vincent*, 65 M. 503 (April 21, '87).

44. The "fraudulent concealment" which will take a claim out of the statute of limitations must be that of the person sought to be charged and not that of his clerk without the employer's fault: *Stevenson v. Robinson*, 39 M. 160.

(c) *In cases of mutual account.*

45. On a running account the time of limitations only begins when there is a special occasion for making a new departure: *Tripp v. Curtenius*, 36 M. 494.

46. There is no account current or mutual account within the statute unless there are accounts on both sides. A credit given by one to the other without the concurrence of the other is not sufficient: *Kimball v. Kimball*, 16 M. 211.

47. Where a defendant relies on the statute of limitations on the ground that the claim has been by his assent converted into an account stated, he must show that such assent was expressed by some unequivocal word or act; it is not sufficient that after the exhibition of the account to him he remained passive: *White v. Campbell*, 25 M. 463; *Payne v. Walker*, 26 M. 60.

48. Items of credit to defendant, entered on plaintiff's books for goods or money "returned," have no tendency to prove the existence of a mutual and open account between the plaintiff and defendant, within the meaning of H. S. § 8717. Such entries denote merely that the transactions to which they relate are stricken out of the account entirely; *Campbell v. White*, 23 M. 178.

49. Where, for mutual convenience, credit is given in the course of a running account for an article that has been returned without being paid for, the transaction is complete in itself and gives neither party a right to make it a matter of account within the statute of limitations. But if cash had been paid for it, which the vendor was allowed to retain, it is a proper item on the credit side, and sufficient to convert the account into a mutual one: *White v. Campbell*, 25 M. 463.

50. Payments upon an account are sufficient to render it such an open and mutual account as to prevent the statute of limitations from barring the remedy thereon: *Payne v. Walker*, 26 M. 60.

51. If an attorney's services are minuted in his register and other proper memorandum books, it is sufficient for the purpose of an account current; there is no requirement that the books upon which entries are made shall be of any particular kind, or the entries of any particular form, and the fact that the amount of the charges was not entered is immaterial: *Ibid*.

52. A payment made upon the same day with the last of a series of charges will render the whole account open and mutual, so as to take previous charges out of the statute of limitations: *Hollywood v. Reed*, 55 M. 308.

53. One who defends against a claim originating in 1869, with items of set-off arising in 1865, 1868 and 1869, cannot show as an additional offset that the plaintiff boarded with him in 1858 and before, in the absence of any showing that there were mutual accounts between them in the meantime; the claim for such board is barred by the statute of limitations and the case cannot be treated as one of mutual accounts renewed after a suspension for a period: *Mandigo v. Mandigo*, 26 M. 349.

54. A son made a claim against his father's estate for the amount of earnings which he had paid over to his father, and for certain outlays on his behalf. One item of the earnings had accrued so long ago as to be outlawed if standing alone, but it was averred to have entered into an account stated within the period of limitation. *Held*, that if set up as a single demand, not reduced by mutual credits, it would be barred, but if properly declared on, it might be shown to have belonged to a series of open dealings which were not closed until within the period of limitation: *Hillebrands v. Nibelink*, 40 M. 647.

55. A claimant against an estate sought to free an open account from the bar of the statute of limitations by showing that within the statutory period the decedent had orally admitted that the price of a bull bought from a firm of which he was a member was properly credited to him individually; also that by his oral consent an order drawn by the claimant on another firm of which he was a member was carried to his individual credit. But there was testimony that no one had accounted for the price of the bull, and there was nothing to show decedent's right to apply the price of it as a set-off to any account held by the claimant against him, and the defence

also claimed that decedent had not assumed to apply to his benefit the credit arising from the payment of the order. The jury found against the claimant. *Held*, that the account was not released from the bar of the statute: *Sperry v. Moore's Estate*, 42 M. 353.

56. Testimony by a third party that he had heard a decedent orally admit having bought certain property and become a debtor therefor at some previous time not specified, but which the witness inferred was comparatively recent, did not avail to release from the bar of the statute of limitations a claim against his estate upon an open account: *Ibid*.

57. An account stated may doubtless be worked out without any written undertaking or acknowledgment, and may be proved by unsigned writings; but it cannot overcome the bar of the statute of limitations unless it is supported by evidence of some writing signed by the party to be charged: *Ibid*.

III. WHEN THE STATUTORY BAR BECOMES COMPLETE.

(a) *In general.*

58. After the statute has commenced to run, no subsequent disability or devolution of the estate will arrest it: *Ten Eyck v. Wing*, 1 M. 40; *De Mill v. Moffat*, 49 M. 125; *King v. Merritt*, 67 M. 194 (Oct. 18, '87).

59. Plaintiffs in ejectment, claiming as heirs, cannot defeat the plea of adverse possession for the period of the statute of limitations by relying upon a disability which arose before the transmission of the estate from their ancestor and after the statute of limitations began to run: *De Mill v. Moffat*, 49 M. 125.

60. An assignment for the benefit of creditors does not prevent the running of the statute of limitations: *Parsons v. Clark*, 59 M. 414.

61. Issuing execution on a judgment does not arrest the running of the statute of limitations: *Ten Eyck v. Wing*, 1 M. 40.

62. A mortgage does not keep alive the personal obligation to pay the debt it secures: *Lashbrooks v. Hatheway*, 52 M. 124.

63. Where one mining company has broken through the partition wall of an adjoining mine, the flow of water through the opening after the right of action for the original breaking has been barred cannot be connected therewith so as to defeat the running of the statute of limitations: *National Copper Co. v. Minnesota Mining Co.*, 57 M. 83.

64. Where the statute (Laws 1833, p. 571) prescribed that actions of debt or *scire facias*

on judgments should be commenced within eight years next after the rendition of such judgments, with a saving in the cases of arrest and reversal of judgments, of judgments on plea in abatement and upon demurrer, it was held that the saving clause could not be extended so as to include a case where plaintiff had been delayed by an injunction issued out of chancery after the statute had commenced to run: *Ten Eyck v. Wing*, 1 M. 40.

65. The defendant in a bill to foreclose a purchase-money mortgage by him given filed a cross-bill relying on frauds in the sale and on breaches of covenant. In a subsequent action by him on the covenants, held, that the chancery proceedings did not prevent the running of the statute of limitations. H. S. § 8738 does not make an equitable suit suspend the statute except where instituted or prosecuted on behalf of the person who wishes to plead the statute: *Sweet v. Haldane*, 68 M. 639 (March 2, '88).

66. The two periods of limitation fixed for the recovery of land by R. S. 1838, pt. 3, tit. 6, chap. 1, § 1, p. 578, cannot be blended, but stand by themselves for different classes of cases. Right of action against an independent intruder must date back only to the origin of his possession, while if one succeeds to another by transfer of title or claim, the right of action goes back to the first occupant in the chain of adverse possession, and action must be brought within twenty-five years after disseizin. Every action shall be brought within twenty years from the time it accrued: *Riopelle v. Gilman*, 23 M. 83.

67. Under a mortgage executed in 1839 the mortgagee could take possession by way of security; but this was a mere right of entry that would be barred after twenty years: *Albright v. Cobb*, 84 M. 816.

68. A right of entry must be enforced within the period of limitations: *Cook v. Hopkins*, 68 M. 514 (March 2, '88).

69. Under R. S. 1838 the right of possession of lands was barred if entry was not made within twenty years from its origin: *Van Fleet v. Blackwood*, 39 M. 728.

70. Under R. S. 1838 a mortgagee had a right of entry on default in the payment of the mortgage; but if he made no entry he could have no such possession as would enable him to enter within twenty-five years, or bring an action for the recovery of the land; and an entry without right by a stranger would not enure to his benefit so as to enable him to make his original entry or bring suit within twenty years from the origin of his right: *Ibid*.

71. Since 1846 a conveyance by an excluded owner of lands held adversely would carry what title he had, and his grantee, like himself, could sue within the statutory period of limitation: *Campau v. Dubois*, 39 M. 274.

72. The statute of limitations of 1829 barred recovery of lands after an adverse undisturbed holding of ten years: *Ibid.*

73. A land contract provided for seven annual payments, the first to fall due in 1857. It gave the vendee possession, breach of a condition to work forfeiture. The vendee failed to pay the instalment due in 1860, and left the premises, and in the same year parties who had been occupying under him attorned to an adverse claimant. *Held*, that under H. S. § 8700, subd. 4, the vendor's right of entry accrued in 1860, or, at the latest, in 1863, and that a suit begun by him in 1884 was barred: *Cook v. Hopkins*, 68 M. 514 (March 2, '88).

74. Land was conveyed to a village upon the condition subsequent that the same should be cleared and ornamented for a public walk or promenade within ten years, title to revert on breach, etc. *Held*, that under H. S. § 8700, providing that when any one claims under a title arising from forfeiture or breach of condition his right should be deemed to have accrued when the forfeiture was incurred or the condition was broken, proceedings begun more than twenty-five years after said rights had so accrued were barred: *Hatch v. St. Joseph*, 68 M. 220 (Jan. 19, '88).

75. Action on an implied *assumpsit* to pay for services performed by plaintiff while living in a relation's house is barred by a lapse of six years after performance ceased: *Robinson v. McAfee*, 59 M. 875.

76. The statute of limitations cannot bar the right to an easement unless there has been an enjoyment adverse to the easement for the statutory period: *Day v. Walden*, 46 M. 575.

(b) *In case of infancy or coverture.*

77. An infant's right of action for seduction is not barred by the statute of limitations until after she has reached her majority, if the circumstances are such that she has to bring suit in her own name and not by another: *Watson v. Watson*, 53 M. 169.

78. The married woman's act of 1855 (H. S. § 6295), removing the disability of coverture and permitting a wife to bring suit for her sole property, impliedly repealed the exception created in her favor by R. S. 1846 (C. L. 1857, § 5354): *King v. Merritt*, 87 M. 194 (Oct. 13, '87); *Curbay v. Bellemer*, 70 M. 106 (April 27, '88).

79. And this exception was not continued

in force by the amendment of 1863 to said § 5354, C. L. 1857, (H. S. § 8702), which was not intended to do more than to introduce the clause relating to the suspension of the running of the statute "unless within one of the British provinces of North America:" *Curbay v. Bellemer*, 70 M. 106 (April 27, '88).

(c) *In case of non-residence or absence.*

80. Residence out of the state, in order to take a case out of the statute of limitations, must be something more than a mere place of abode; it must be the party's domicile, which can only be in one place, and it must have the incidents, which may vary under different circumstances, but which determine the place of his home which he has adopted with the intention of remaining there, and to which, when he is absent, he intends to return: *Campbell v. White*, 23 M. 178.

81. Neither absence from the state nor residence out of it will alone suspend the running of the statute of limitations within the meaning of H. S. § 8721: both must exist to take the case out of the statute. Where the absence has not been continuous, the different occasions when a debtor has been within the state — if his presence was sufficiently notorious, or lasted long enough, to fairly enable the creditor, by exercising reasonable diligence, to subject him to service of process — may be reckoned together, and the statute will run during the period thus computed, it being the legislative intent that the operation of the exception should be concurrent with the existence of the obstacle which prevents a service upon the debtor: *Ibid.*

82. Under H. S. § 9507, deducting from the period of limitation the time "during which the party charged was not usually and publicly a resident within the state," not mere absence from the state is referred to, but such absence as destroys residence: *People v. McCausey*, 65 M. 72 (Feb. 10, '87).

83. Where the statute of limitations is pleaded to an action of debt on a judgment, it cannot be held that the residence of defendant's family can, by itself, as matter of law, determine the place of his own residence: *Conrad v. Nall*, 24 M. 275.

84. The provision (H. S. § 8721) for a deduction from the period of limitation of the time the debtor is absent from and resides out of the state applies to every cause of action mentioned in H. S. ch. 302, which includes debtors by judgment recovered in courts of record as well as those recovered in courts not of record; § 8736, also, was not intended to

operate independently of the other provisions of the same chapter: *Ibid*.

85. Where a defendant who relies on the statute of limitations had resided a part of the time in a foreign country, the burden is upon him to show that the sum of the times of his presence within the jurisdiction was sufficient to satisfy the statute: *White v. Campbell*, 25 M. 463.

86. Prior to the amendment of 1871 to C. L. 1857, § 5366 (see H. S. § 8718), a cause of action which accrued in Canada upon a promissory note in favor of a Canadian resident who had never been within the United States was not barred by the defendant's residing more than ten years in Michigan; the disability of absence from the United States applied to such a case and prevented the limitation from running: *Erskine v. Messicar*, 27 M. 84.

87. The term "persons beyond seas," in the statute of 1820 (code of 1833, p. 569), meant persons out of the state: *Hulburt v. Merriam*, 3 M. 144. See *Pease v. Peck*, 18 How. (U. S.) 595.

88. A finding that defendant with his family moved to Joliet, Illinois, in 1873, "and at that place resided up to the time of the commencement of this suit," is equivalent to a finding that during the intervening period he was absent from Michigan, and brings the case within the exception to the statute of limitations: *McKenzie v. Boylan*, 40 M. 329.

(d) *Adverse possession.*

1. General principles.

89. The doctrine of title by adverse possession must be strictly construed: *Yelverton v. Steele*, 40 M. 538.

90. Adverse possession is a defence resting wholly upon facts: *Demill v. Moffat*, 45 M. 410.

91. Adverse possession must be clearly shown and not left to inference: *Yelverton v. Steele*, 40 M. 538.

92. Adverse possession must be clear and distinct, and plainly proved, to establish title: *Campau v. Campau*, 45 M. 367.

93. Title by adverse possession, whatever the extent of the claim, must be clear and distinct, especially as against co-tenants in common: *Campau v. Campau*, 44 M. 81.

94. When title is claimed by an adverse possession for the statutory period, it should appear that the possession had been actual, continued, visible, notorious, distinct and hostile. And where the circuit judge was requested so to instruct the jury, and refused,

but instructed them only that the possession must be actual, continued and visible, held to be error: *Sparrow v. Hovey*, 44 M. 63.

95. Adverse possession, to give title, must be an actual, continued, visible, notorious, distinct and hostile possession, and a finding of adverse possession must set forth in explicit terms a state of facts that will satisfy the legal definition: *Yelverton v. Steele*, 40 M. 538.

96. In an ejectment case the court instructed the jury, upon the question of adverse possession, that to bar a recovery the premises must have been occupied by defendant for fifteen years by an open and notorious possession, adverse to plaintiff, but did not tell them that this possession, in order to be adverse, must be distinct and hostile to plaintiff's rights. Held, in the absence of any request for a definition, that there was no error: *Miller v. Beck*, 68 M. 76 (Jan. 5, '88).

97. There must be an adverse possession before the statute of limitations can commence to run: *May v. Rumney*, 1 M. 1.

98. An action of ejectment is not barred after ten years' occupancy by defendant if it does not appear that his possession was adverse to the plaintiff: *Perkins v. Nugent*, 45 M. 156.

99. Adverse possession cannot arise until there is some one to dispute the right claimed: *Marble v. Price*, 54 M. 466.

100. There can be no adverse possession against one whose legal title or right of entry is incomplete: *Cook v. Knowles*, 38 M. 316.

101. Adverse possession requires exclusive occupancy known to and against the will and consent of those who are interested and have a right to contest the possession: *Whitford v. Crooks*, 54 M. 261.

102. Constructive possession is co-extensive with the title which creates it, and actual possession is limited by the occupant's title: *Campau v. Campau*, 44 M. 81.

103. Twenty years' adverse possession by one heir to an estate, following a parol sale to him of the interest of another heir, gives the former a sufficient title: *Hynes v. Osborn*, 63 M. 235.

104. Where the line of a building on a street has been occupied and used by the public as the line of the street for twenty-five years, title is gained as against the public to all the ground occupied by the building: *Big Rapids v. Comstock*, 65 M. 78 (Feb. 10, '87).

105. The acquiescence which will prevent the running of the statute must be that of the possessor in the owner's claim, and not that

of the owner in possession not acknowledged to be held under him: *Bower v. Earl*, 18 M. 367.

2. What constitutes.

106. Possession is adverse if under color of title and a claim of right, and exclusive, held so openly and notoriously that the community understand and recognize the claim of ownership: *Murray v. Hudson*, 65 M. 670.

107. A claim under a tax-title is necessarily hostile to the owner of the original title: *Sparrow v. Hovey*, 44 M. 63.

108. An adverse holding may exist though the holder does not believe in his title: *Campau v. Lafferty*, 43 M. 429.

109. Color of title, under a deed, and occupancy of a part, will be sufficient proof to constitute an adverse possession to a single lot: *Millerd v. Reeves*, 1 M. 107.

110. Adverse possession need not be based on color of title, and it may become perfect even though the possessor originally had no shadow of title. But it must plainly appear, in such a case, that the real owner has been given a cause of action; and if the possession began in subordination to his right he is entitled to assume that his right is continuously admitted until he finds that it is disputed, or that the possessor has renounced the title under which he entered; and until then the owner cannot be prejudiced by not bringing suit: *Campau v. Lafferty*, 50 M. 114.

111. Where one sells part of a parcel of land and delivers possession up to a certain line, and continues the occupancy of the remainder to that line, he is to be considered, as against his grantee, in adverse possession to that line, and if such possession is continuous for twenty years the grantee cannot insist that such line was not the true boundary: *Bower v. Earl*, 18 M. 367.

112. Proof that a person entered into possession under a contract with a party under whom the claimant holds — it appearing that he never received a deed and that he has ceased to occupy the premises — is not evidence of possession adverse to claimant: *Rayner v. Lee*, 20 M. 384.

113. Adverse possession is held as against one's grantor by one who has taken a warranty deed of the premises in reliance on the record title and in ignorance of any life-lease outstanding in the grantor: *Case v. Green*, 53 M. 615.

114. One who buys lots which his deed describes according to a recorded plat is estopped from disputing the dedication and acceptance of an alley which appears thereon as bounding

his lots and passing between them; and a mere occupancy by him of the space designed for the alley, without claim or color of title, does not establish an adverse possession until the interests of some one else are affected by it, nor will it entitle him to maintain trespass against a neighboring lot-owner for driving through the alley and tearing down obstructions placed there to prevent his using it: *Marble v. Price*, 54 M. 466.

115. An owner of outlots which he does not fence or cultivate may establish an adverse possession by cutting grass and timber, ditching, paying general and special taxes, and openly and notoriously claiming and using the land: *Curtis v. Campbell*, 54 M. 340.

116. Use of land as a wood lot appurtenant to one's farm, and the exercise of such acts of ownership as are necessary to such use, amount, if continuous and uninterrupted, to actual possession: *Murray v. Hudson*, 65 M. 670 (April 28, '87).

117. To constitute adverse possession it is not necessary that the occupation should be such that a mere stranger passing by the land would know that some one was asserting title to and dominion over it, nor is it necessary that the land be cleared or fenced or any building be placed upon it: *Ibid.*

118. Payment of taxes on land by a person claiming ownership is admissible in an action of ejectment against him, as tending not only to establish his claim of ownership, but to show adverse possession, the taxes being assessed to him: *Ibid.*

119. Where possession is shown to have been once acquired by those under whom a party claims, evidence that the land has since been assessed as resident land, and that the taxes have been paid by some one in such party's chain of title, is admissible as tending to show that the possession was continued: *Rayner v. Lee*, 20 M. 384.

120. The mere payment of taxes on land is not such an assertion of ownership as to affect the adverse possession of another party, or to weaken the force of the payer's other acts and conduct looking to an abandonment of his claim of title: *Cook v. Rounds*, 60 M. 310.

121. Plaintiffs in ejectment cannot affect a claim of long continued adverse possession by showing that the land was assessed to their ancestor for several years after his death, when it does not appear that defendants' ancestor, who had paid the taxes, had anything to do with having them assessed to plaintiffs' ancestor: *Dubois v. Campau*, 28 M. 304.

122. Adverse possession and its character

may be shown by the claims and assertions of occupants, and if these are made in the ordinary course of possession and not during litigation, they are admissible as explanatory and for what they are worth: *Jacobs v. Callaghan*, 57 M. 11.

123. Adverse possession up to a boundary for fifteen years being sufficient to bar a recovery by the contiguous owner, actual knowledge of the adverse holding is not required where the circumstances are such that the contiguous owner should have known it: *Bird v. Stark*, 66 M. 654 (July 7, '87).

124. Possession, when taken wrongfully, should put the real owner on his guard; but when held in apparent subordination to the owner's rights, and without his knowledge that it is in opposition to them, it cannot be considered adverse: *Campau v. Lafferty*, 50 M. 114.

125. Where notwithstanding a deed to one person another went into exclusive possession and exercised acts of ownership, and such possession was recognized by all mesne grantees of the first, the occupant's adverse title is a question for the jury in an action of ejectment against him by one claiming under the deed: *McCall v. Wells*, 55 M. 171.

126. An adverse holding must formerly have been under claim of title to make void a deed given by one out of possession; but no claim of title has been necessary to perfect an adverse title under the statute of limitations: *Campau v. Dubois*, 39 M. 274.

127. Actual possession with a claim of ownership in fee establishes a presumptive title as against every one but those whose title is better: *Loomis v. Roberts*, 57 M. 284.

128. Occupation by one tenant in common, giving leases and receiving rents for more than twenty years, with the knowledge of the co-tenant, but without actual knowledge of the latter's rights, and without any claim by the co-tenant for a share of the rents and profits, constitutes adverse possession in the absence of anything to show that it is other than adverse: *Dubois v. Campau*, 28 M. 804.

129. Whether it is error to rule that occupation by one tenant in common, giving leases and receiving rents for more than twenty years with the knowledge of his co-tenant, without actual acknowledgment of the latter's rights, and without any claim by such co-tenant for a share of the rents and profits, will bar a recovery in ejectment by the latter, *quere*, two justices holding that upon such facts the inference or presumption of title is one of law, and the other two holding it to be one of fact for the jury: *Ibid*.

130. Where one of several heirs had taken exclusive possession of land to which all were entitled as tenants in common, and had improved it without interference from the others, though they lived in the immediate neighborhood, and no possessory action was brought by them, or by their heirs or representatives for more than twenty-five years after their death, it was held that no possession could properly be found that was not adverse and exclusive within the statutory period of limitation, and that there could be no recovery in the right of the excluded parties: *Campau v. Dubois*, 39 M. 274.

131. There is no statute disposing of the controversies which may arise from the exclusive possession of one tenant in common during a longer period than will otherwise bar the recovery of real property: *Ibid*.

132. Tenancy in common extends to the entire premises, but sole possession by any one tenant is not presumed adverse as against the rest and does not affect their rights, unless held under a claim of exclusive right whereof they have express or implied notice: *Campau v. Campau*, 44 M. 31; *Gower v. Quinlan*, 40 M. 573.

133. A claim of adverse possession by one tenant in common, as against another, must be clear and unambiguous because the mere possession in a tenant in common would be rightful and would not imply an adverse holding, and the tenant is presumed to hold in recognition of the rights of his co-tenant unless his acts and declarations are clearly inconsistent with such presumption: *Campau v. Campau*, 45 M. 387.

134. The lessee of one tenant in common told the son of the other, while the father was living, that he (the lessee) had more right on the premises than he (the son) had. Held, that this had no tendency to prove that the tenant in common under whom he occupied the premises held adversely to the other: *Ibid*.

135. A tenant in common who has entered upon a portion of the premises is not thereby precluded from claiming the whole, since he is not barred from buying the remainder of the title: *Chamberlain v. Ahrens*, 55 M. 111.

136. A husband cannot hold adversely to his wife premises of which they are in joint occupancy as a family: *Hendricks v. Rason*, 53 M. 575.

3. How interrupted or arrested.

137. Adverse possession is not broken by negotiating with other claimants if there is no waiver or non-claim on the occupant's part: *Chapin v. Hunt*, 40 M. 595.

138. The continuity of adverse possession is broken by a decree requiring the occupant to convey the land, even if the actual possession is not disturbed. The decree has the effect of a voluntary conveyance: *Gower v. Quinlan*, 40 M. 572.

139. A parol lease for a single year, if accepted, is enough to break a period of adverse possession and bar the statute of limitations against actions for real estate: *Campau v. Lafferty*, 43 M. 429.

140. Adverse possession is not broken by deeding the land away if the grantor continues in possession and takes back a mortgage for purchase money which he afterwards forecloses, and under which he himself becomes foreclosure purchaser. And it is immaterial that the foreclosure proceedings are defective if the possession is retained: *Whitford v. Crooks*, 54 M. 261.

141. Tearing down the fence between one's self and one's next neighbor after asserting a right to premises enclosed by it is a mere trespass; and though perhaps a common-law entry, it does not break his adverse possession of the premises enclosed, nor of itself disseize him: *Donovan v. Bissell*, 53 M. 462.

142. The effect of evidence of continuous possession as the basis of a claim of title is not destroyed by proof of occasional interruptions in the actual occupancy of the premises, nor by the fact that at times they were actually occupied by persons not distinctly shown to be in under any of the parties in the claimant's chain of title; there being no proof of any adverse occupancy, or of any intention of the claimant or his grantors to abandon the possession. It is a just presumption that such persons were in, as tenants merely, under the parties claiming title: *Rayner v. Lee*, 20 M. 384.

143. Any presumption that the adverse character of a possession of land ceases when the holder buys the original title to a part of the premises may be overcome by evidence that the possession held continued under the claim of an exclusive right, and with the intention to exclude co-owners of the original title from any right or interest: *Cook v. Clinton*, 64 M. 309.

IV. COMMENCEMENT OF ACTION IN PROPER TIME.

144. A suit is not begun, for the purposes of the statute of limitations, by merely filling out a summons and leaving it in the justice's office until the return day, or by retaining it

in the plaintiff's custody; it must be issued with the intent that, if practicable, it shall be served: *Howell v. Shepard*, 48 M. 472.

145. H. S. § 6828 provides that a plaintiff who has taken out an *alias* summons that has been returned not personally served "may, in further continuation of the suit, have an attachment against the defendant" on which property may be taken. Held, that this is an alternative remedy, and that instead of resorting to it the plaintiff may take out successive writs of summons for the purpose of keeping a suit alive under the statute of limitations: *Ibid*.

146. Where the continuity of an action is interrupted by an interval between the return day of one writ of summons and the issue of an *alias* writ, the institution of the action will not bar the operation of the statute of limitations: *Johnson v. Mead*, 58 M. 67.

147. Suit being commenced in justice's court, the plaintiff employed an attorney to appear and prosecute the suit for him on the return day. The attorney was prevented from attending to the suit on that day, and requested another to appear, who did so, but his authority being required he was not able to prove it, and the action failed. It was held that these facts did not make out a case within H. S. § 8723, allowing a new action within one year where "in any action duly commenced," etc., "the suit shall fail of a sufficient return, by any unavoidable accident, or by any neglect or default of the officer to whom it is committed, or if the writ shall be abated, or the action otherwise avoided or defeated, by the death of any party thereto, or for any matter of form; or if, after verdict for the plaintiff, the judgment shall be arrested, or if a judgment for the plaintiff shall be reversed on writ or error:" *Spier v. M'Queen*, 1 M. 252.

148. The erroneous dismissal by the circuit court of a regular appeal from a justice is an avoidance of the action "for matter of form," and a new suit may be brought within one year from such dismissal: *Pattridge v. Lott*, 15 M. 251.

149. H. S. § 8723, allowing a "new action" to be commenced within one year after abatement or reversal, etc., gives no further delay on account of plaintiff's death in the interval, but requires the personal representative, no matter when appointed or qualified, to sue in the same year: *Foote v. Pfeiffer*, 70 M. 581 (June 8, '88).

150. Said H. S. § 8723 applies to reversals on writs of *certiorari*: *McOmber v. Chapman*, 42 M. 117.

V. REMOVAL OF BAR BY ADMISSION OR NEW PROMISE.

151. An oral promise made since, to pay a simple contract debt barred by the statute of limitations before R. S. 1838 took effect, will not revive the cause of action, but such promise must be in writing as required by R. S. 1839, p. 578, § 13: *Joy v. Thompson*, 1 D. 378.

152. And such requirement does not violate the obligation of contracts: *Ibid*.

153. Where a new promise is set up it ought to be proved in a clear and explicit manner, either expressly or by such an unqualified acknowledgment as authorizes its implication: *Ten Eyck v. Wing*, 1 M. 40.

154. The acknowledgment should contain an unqualified and direct admission of a present subsisting debt, which the party is liable and willing to pay, and be unaccompanied by circumstances or declarations which repel the presumption of a promise or intention to pay: *Ibid*.

155. A stipulation between the parties in a chancery suit brought to restrain proceedings on an execution under a judgment, that the injunction be dissolved, the execution be set aside, and a reference be taken to state an account, etc., was held not to be such an acknowledgment of debt as to warrant the implication of a new promise: *Ibid*.

156. The original consideration is sufficient, if recognized, to uphold a new promise to pay a debt barred by the statute: *Ibid*.

157. In order to avoid suit and to gain time to procure evidence of set-off, a debtor signed this writing in her creditor's book: "I extend this book account four months from April 30, 1886." Held a sufficient acknowledgment of the debt to take it out of the operation of the statute: *Crane v. Abel*, 87 M. 242 (Oct. 13, '87).

158. An oral promise to pay an old debt does not renew it so as to take it out of the statute of limitations, if it is not kept open by mutual dealings: *Hillebrands v. Nibbelink*, 40 M. 647.

159. Part payment of a demand, though neither a contract nor in itself a promise, is an acknowledgment of the continued existence of the demand, and waives the right to plead the statute of limitations upon such lapse of time as may have preceded the payment. And it renews from its date whatever right of action existed before: *Miner v. Lorman*, 56 M. 212.

160. Where payments are made on a barred claim, there need be no written promise to make further payments: *Miner v. Lorman*, 56 M. 490.

161. A promise to pay the balance of a barred debt cannot be implied as an inference of law from the mere fact of part payment; that fact is merely evidence of such a promise, and the inference that such a promise was made or intended must be found as a fact on the trial: *Parsons v. Clark*, 59 M. 414.

162. If the acknowledgment of a debt, or a partial payment of it, is accompanied by declarations or circumstances which rebut the implication of a promise to pay, or that the debtor, by the partial payment, admitted his obligation to pay the residue, the demand is not revived: *Jewett v. Petit*, 4 M. 508.

163. The indorsement of a partial payment upon a promissory note, written by the party to be charged thereby, is competent evidence of such payment to take the case out of the statute: *Chandler v. Lawrence*, 3 M. 261.

164. Although the statute requires a new promise to be in writing, the fact of payment may be proved by the admission of defendant or by other competent parol evidence: *Ibid*.

165. Unexplained indorsements and indorsements written by or for the payee are not sufficient proof of payment as against the debtor to take a case out of the statute of limitations: *Michigan Ins. Co. v. Brown*, 11 M. 265; *Rogers v. Anderson*, 40 M. 290.

166. A note purporting on its face to be eight years overdue had upon it two indorsements, dated within six years of the time of bringing suit upon it. The only proof offered by the plaintiff in the case was that no other payments than those indorsed had been made. Held, that this did not prove or tend to prove the indorsed payments: *Snyder v. Winsor*, 44 M. 140.

167. An outlawed note cannot be revived by applying upon it a payment not intended to be made on it, nor supposed to be so by the parties: *Krone v. Krone*, 38 M. 661.

168. A part payment by an assignee for the benefit of creditors does not operate to take a debt out of the statute of limitations: *Parsons v. Clark*, 59 M. 414.

169. A payment by the estate of a joint and several promisor does not prevent another promisor from taking the benefit of the statute of limitations (H. S. § 8730): *Holcomb v. Sloan*, 39 M. 173.

170. One joint maker of a note does not lose the benefit of the statute of limitations by reason of payments made by another: *Rogers v. Anderson*, 40 M. 290.

171. A payment or new promise by one of several joint debtors will not keep the obligation alive as to another who had no part or privity therein: *Tate v. Stevenson*, 55 M. 820.

172. A partnership note is a joint contract within the meaning of H. S. § 8730, so that a payment thereon by one partner within the period of the statute of limitations will not bind the other if the firm had previously dissolved to the payee's knowledge: *Gates v. Fisk*, 45 M. 522.

173. Where one partner in writing authorizes the other to make a separate composition with the firm creditors, and he does so, payments made by the latter on such composition will not keep alive the demand as to the other: *Sigler v. Platt*, 16 M. 206.

174. A payment made by a wife with her own means upon a note in which she is a surety for her husband, he having nothing to do with such payment, does not take the note out of the statute as to him; nor would it were she liable on the note as a joint debtor: *Littlefield v. Dingwall*, 71 M. — (July 11, '88).

175. Where a debtor and his surety go to the creditor together for the express purpose of making a payment, and for that alone, and both apparently co-operate in the transaction, though the debtor alone handles the money, the creditor has a right to consider it a joint payment binding the surety under the statute of limitations, unless the surety notifies him that it is not so: *Mainzinger v. Mohr*, 41 M. 685.

VI. PERIOD OF LIMITATION IN PARTICULAR CASES.

For recovery of dower, see DOWER, §§ 79, 80.

As to limitation of time for suits between assignee in bankruptcy and adverse claimants, see BANKRUPTCY, § 43.

176. Suits against a corporation whose charter has expired must be commenced within three years after expiration: *Montgomery v. Merrill*, 18 M. 388.

177. A corporation formed under a general law can begin suits in its own name at any time within three years after the end of its period, and continue them to a close, unless superseded by trustees or receivers; and this though such general law is repealed (H. S. § 4867): *Bewick v. Alpena Harbor Co.*, 39 M. 700.

178. The occupation of land by a city for market purposes is not a public easement, but a proprietary occupation, and private adverse rights will be barred by the same lapse of time as if the occupation was by a private person: *Cooper v. Detroit*, 42 M. 584.

179. The judgment of a court of record is good for ten years: *Ward v. Citizens' Bank*, 46 M. 332.

180. A justice's judgment is barred in six years by H. S. § 8713, and execution cannot thereafter issue: *Jerome v. Williams*, 13 M. 521.

181. A justice's judgment docketed on transcript in the circuit court is not barred in less than ten years (settling the query in *Jerome v. Williams*, 13 M. 521): *Arnold v. Thompson*, 19 M. 333.

As to period of limitation of issue of execution against stay, see EXECUTIONS, § 5.

182. An action of *assumpsit* is barred after six years whether brought on a sealed or an unsealed contract: *Sigler v. Platt*, 16 M. 206.

183. H. S. § 7778 does not compel a resort to the action of *assumpsit* upon a sealed instrument; debt may be brought thereon, and is not barred until ten years: *Goodrich v. Leland*, 18 M. 110.

184. H. S. § 7778 permits *assumpsit* to be brought where covenant might be maintained, but § 8713 bars any action in *assumpsit* after six years. *Held*, that it is the form, and not the cause of action, which fixes the bar, and the remedy elected is governed by the limitation appropriate to itself: *Christy v. Farlin*, 49 M. 319.

185. Debt on sealed lease for rent may be brought any time within ten years; the period is governed by H. S. § 8719, and is not affected by §§ 8713, 7778: *Stewart v. Sprague*, 71 M. 50.

186. A partner's right to an accounting is not barred in six years where the partnership articles are under seal and contain covenants. No claim under such articles would be barred in that time unless raised in an action of *assumpsit*: *Near v. Lowe*, 49 M. 482.

187. The statute of limitations, if it runs at all against a partner's right to an accounting, is barred by dealings in the shape of a showing of balances: *Ibid*.

As to bar of proceedings in equity for accounting, see EQUITY, §§ 601-604.

188. An action by a private person as for continuing injury in keeping a railway track in the street near his premises is subject to the six-year limitation, if defendant relies on permission given longer ago, and plaintiff seeks to show by such evidence as remains that his permission was obtained by fraud: *Krueger v. Grand Rapids & I. R. Co.*, 51 M. 142.

189. The ten years' limitation in the law of 1842 (S. L. p. 133) does not apply in favor of one who was in possession under some other claim at the time of obtaining his tax-title. The statute intends that the party who seeks the benefit of the limitation shall enter, or

shall have entered, under his tax-deed: *Gilman v. Riopelle*, 18 M. 145.

190. H. S. § 8698, barring, after ten years' adverse possession, ejectment for land held under a tax-deed, applies to a claim under a tax-deed that conveys an undivided half of the premises, but does not specify which half; it is only necessary that the claim be consistent with the face of the deed; and the deed need not be good: *Chamberlain v. Ahrens*, 55 M. 111.

191. One who enters under tax-titles is protected by a ten years' occupancy, whatever equities there may have been to estop the original purchaser of the titles from buying them: *Reilly v. Blaser*, 61 M. 399.

192. A sale on execution on a judgment void for want of jurisdiction will not authorize the purchaser to claim the benefit of H. S. § 8698, requiring action to be brought within five years where title is claimed under a deed made upon a sale by an officer under judgment of a court: *Millar v. Babcock*, 29 M. 526. See *McVickar v. Filer*, 31 M. 304.

193. So, an administrator's sale void for want of jurisdiction is not protected by H. S. § 8698: *Toll v. Wright*, 37 M. 98.

194. Ten years' actual possession under an administrator's deed is *prima facie* evidence of the regularity of title, and in an action upon a covenant of warranty neutralizes the *prima facie* showing which a judgment in ejectment establishes against the covenantor: *Mason v. Kellogg*, 38 M. 132.

As to limitation of time for bringing action to attack an administrator's or a guardian's sale, see EQUITY, § 597; ESTATES OF DECEDENTS, §§ 328-331; GUARDIANSHIP, § 161.

195. Where the probate court has neglected to decree payment of debts and distribution of assets four years and a half after issuing letters of administration in accordance with H. S. §§ 5925, 5926, the right of action on the administrator's bond begins to run at that time, and in due course is barred by the statute of limitations: *Biddle v. Wendell*, 37 M. 452.

As to limitation of time for suing administrators or guardians and their sureties, see, also, ESTATES OF DECEDENTS, §§ 40, 254; GUARDIANSHIP, §§ 55, 56.

196. Whether the statute of limitations applies to *mandamus* proceedings for collection of a liquidated liability, *quere*. Certainly the period is not less than ten years (H. S. § 8719): *Oceana v. Hart*, 48 M. 319. See *Merrell v. Gladwin County Treasurer*, 61 M. 95.

197. Where six years have elapsed since the issue of township orders for work and

labor performed, and payment was refused nearly that long ago, they cannot be enforced: *Owen v. Lincoln*, 41 M. 415.

VII. PLEADING AND EVIDENCE.

That the defence of the statute of limitations may be taken by demurrer in chancery, see EQUITY, § 858.

198. To avoid the statute of limitations on the ground of a fraud of the defendants in concealing the cause of action, the pleading should set out the particular acts of fraud or concealment and the time when discovered: *Beaubien v. Beaubien*, 23 How. (U. S.) 190.

199. A plea of the statute of limitations, that the plaintiff's cause of action did not accrue within six years next before the filing of the plaintiff's amended declaration, is bad: *Wilcox v. Kassick*, 2 M. 165.

200. By pleading that the cause of action did not accrue within ten years defendant waives objection to the filing of a declaration in debt where suit had been begun by summons in *assumpsit*: *Brewer v. Boynton*, 71 M. — (July 11, '88).

201. The defence of the statute of limitations is available upon the trial of an appeal from the allowance of a claim against a decedent's estate, and an issue need not be framed to admit it: *McGee v. McDonald*, 66 M. 628 (July 7, '87).

202. A declaration cannot be amended so as to set forth a new cause of action that has become barred by the statute since the original declaration was filed: *Gorman v. Newaygo Circuit Judge*, 27 M. 138; *M. C. R. Co. v. Kalamazoo Circuit Judge*, 35 M. 227.

203. A notice under the general issue in justice's court, apprising plaintiffs that defendant relies on the statute of limitations, is sufficient; and where he pleaded *non assumpsit* within six years, instead of *actio non accrevit*, he should have been allowed the benefit of the defence, with or without amendment: *Snyder v. Winsor*, 44 M. 140.

204. A doctor, suing for professional services, filed a bill of particulars including a credit which, if true, made the account an open one, and barred by the statute of limitations. On a second trial he obtained leave to amend his bill by adding another credit of later date than the last debit item. *Held*, that leave should not have been granted, and that it was proper to exclude proof of the credit, which could not have had any effect on the statute of limitations: *Hollywood v. Reed*, 57 M. 234.

205. An amendment to permit the defend-

ant to interpose the defence of the statute of limitations is in the discretion of the court, and the denial of an application for that purpose is not reviewable: *Ripley v. Davis*, 15 M. 75.

206. Refusing on the trial to allow defendant to interpose the statute of limitations is not error: *Marx v. Hilsendegen*, 46 M. 336.

207. A declaration on a residuary legatee's bond, alleging as a breach a failure to pay a claim allowed in plaintiff's favor, is amendable by adding a count alleging the failure to pay a note, which constituted the claim, even though such note is six years overdue; no new cause of action is introduced by such amendment: *Abbott v. Wayne Circuit Judge*, 55 M. 410.

208. *Prima facie* outlawry of a note does not prevent its introduction in evidence under a declaration on the common counts with copy served: *Michael v. Tuttle*, 37 M. 502.

209. The fact that a claim is apparently outlawed does not necessarily exclude evidence thereon; the question whether or not it is barred is one to be dealt with when the testimony is all in: *Cotherman v. Cotherman*, 58 M. 465.

210. Where one who has been under guardianship as a minor brings ejectment to test the validity of a sale made by his guardian, he has the burden of proving the continuance of his infancy to a date not more than five years before he began suit: *Stewart v. Ashley*, 34 M. 183.

211. Where the parties in ejectment, being co-tenants, rely upon an ouster, and defendant claims title by adverse possession, plaintiff has the burden of showing that he was ousted within the period of the statute of limitations, and the defendant of showing that he had ousted the adverse claimant so long before that the period of limitation had run since: *Highstone v. Burdette*, 54 M. 329.

LIVERY-STABLE KEEPER.

See BAILMENT, §§ 5-10, 24; DAMAGES, § 147; LIEN, § 121.

LOGS AND LOGGING.

As to driving and booming, and as to the powers, rights and liabilities of companies and individuals engaged therein, see WATERS, VIII.

As to liens for labor and logs, and the enforcement thereof, see LIENS, III.

Further, see references under this heading in the INDEX.

LOST GOODS.

1. At common law the finder of lost goods has a complete title as against all but the owner: *Cummings v. Stone*, 13 M. 70.

2. It is a question of fact and not of law whether the finder of lost property has given fair and reasonable opportunity for its identification before restoring it, and whether the claimant should have been given an opportunity to inspect it in order to decide whether it belonged to him. The jury's attention must be confined to the state of things preceding the beginning of suit: *Wood v. Pierson*, 45 M. 313.

3. In an action against the finder of lost property for its conversion by refusing to give it up, the fact that after suit was begun the finder learned that it really belonged to the claimant has no tendency to show that he had fair and reasonable evidence thereof before suit: *Ibid*.

4. A right of action against the finder of property for which a reward has been offered is not defeated by neglect to tender the reward: *Ibid*.

5. The finder of lost goods who has been at trouble and expense about them has no lien upon the goods for compensation, unless they were lost at sea; then he has a lien for salvage: *Fitch v. Newberry*, 1 D. 1, 16.

6. A finder of lost property has no lien upon it as finder after he knows to whom it belongs; but he has a lien upon it for whatever reward may be offered for its recovery: *Wood v. Pierson*, 45 M. 313.

7. A reward for lost property is not waived by insisting on its identification or any legal advantage connected with the finding: *Ibid*.

8. While plaintiff's tug-boat was towing defendant's raft in St. Clair river, the tow-line caught and raised from the river an anchor and chain, which were secured by defendant and brought upon the raft. *Held*, that the parties were joint finders of the property, and that the interest of the plaintiff was a sufficient consideration for the agreement of the defendant to sell it and divide the proceeds: *Cummings v. Stone*, 13 M. 70.

9. Under H. S. § 2068 the right to sell goods found does not accrue until a year from the finding. It not appearing that the property was found in that part of St. Clair river which lies in Michigan, such agreement for division

could not be held void under our statute of frauds, as not in writing, and — because of said § 2068 — not capable of performance in one year: *Ibid.*

MALICIOUS PROSECUTION.

I. WHEN THE ACTION LIES; PROBABLE CAUSE; MALICE.

II. PLEADING.

III. EVIDENCE.

IV. DAMAGES.

I. WHEN THE ACTION LIES; PROBABLE CAUSE; MALICE.

Liability of insurance company for prosecution by agent, see INSURANCE, § 360.

1. An action for malicious prosecution cannot be maintained against the complainant in a criminal proceeding who, after fully and fairly disclosing to the prosecuting officer everything within his knowledge which would tend to cause or to exclude belief in plaintiff's criminality, left him to determine on his sole responsibility whether the proceeding should be instituted, even though the case were not a proper one for prosecution: *Smith v. Austin*, 49 M. 286.

2. To sustain an action for malicious prosecution of a criminal proceeding there must be an acquittal, or such proceedings as determine the case in favor of the accused person without any settlement by him of the criminal charges, or any connivance on his part to obtain his discharge: *Brand v. Hinchman*, 68 M. 590 (March 2, '88).

3. An action for malicious prosecution lies against one who has caused the arrest of another on a criminal charge, even when the latter, after much delay, and an unsuccessful endeavor to obtain a trial, has been discharged on a *nolle prosequi*: *Stanton v. Hart*, 27 M. 539.

4. It seems that this action may be allowed whenever the particular proceeding on which it is based has come to an end so that the prisoner can be no farther pressed upon it: *Ibid.*

5. The action will not lie if plaintiff was convicted before a justice of the peace, but was discharged on appeal, unless the conviction was procured by fraud, perjury or subornation, or was otherwise exceptional. And if any exception is relied on the plaintiff must allege the facts which create it: *Phillips v. Kalamazoo*, 53 M. 33.

6. Where an accusation of felony is withdrawn and respondent is convicted of a misdemeanor included in it, but is acquitted on

appeal, the conviction is not such evidence of probable cause as will defeat an action for malicious prosecution based on the charge of felony: *Labar v. Crane*, 49 M. 561.

7. One is properly found guilty of having instituted a malicious prosecution for larceny where his information was obtained from a discharged convict then under criminal accusation; where the source of information was not disclosed to the magistrate from whom the warrant was obtained; where the arrest was made in the night-time, defendant being present, and where the prosecution was voluntarily abandoned: *Chapman v. Dunn*, 56 M. 31.

8. Whether an action for a malicious prosecution, based on an illegal civil arrest, must be postponed until judgment has been rendered in the proceedings on which it is founded, *quere*: *Josselyn v. McAllister*, 22 M. 300.

9. As a general rule this action cannot be grounded on the prosecution of a malicious civil suit until such suit has terminated in favor of the defendant therein; but this rule does not apply to the suing out of a false and malicious attachment: *Brand v. Hinchman*, 68 M. 590 (March 2, '88).

10. Where want of jurisdiction does not appear on the face of the warrant, but only by evidence *aliunde*, the party arrested and prosecuted may, when acquitted, maintain an action for malicious prosecution on a showing that it was malicious, and in the absence of proof of probable cause, or that defendant acted in good faith: *Sweet v. Negus*, 80 M. 406.

11. The action will not lie unless defendant acted from malicious motives and without probable cause: *Hamilton v. Smith*, 39 M. 222; *Spalding v. Lowe*, 56 M. 367.

12. Good faith and honest motives, where there is not even probable cause for making a criminal complaint, are not a defence to an action for malicious prosecution: *Wilson v. Bowen*, 64 M. 133.

13. A justice's mistake in filling out a complaint as one for assault and battery, when the actual complaint on which the warrant was issued was for an assault only, cannot in an action for malicious prosecution prejudice the person making the complaint: *Carter v. Sutherland*, 53 M. 597.

14. This action cannot be maintained against the complainant in a criminal proceeding for which there was probable cause, no matter how evil or malicious his motives may have been in making complaint: *Smith v. Austin*, 49 M. 286.

15. The conclusion reached by a justice

upon examination in a criminal proceeding as to whether there is probable cause for commitment is not final upon that question: *Spalding v. Lowe*, 56 M. 387.

16. The existence of probable cause for an alleged malicious prosecution depends on the state of facts found by the jury under proper instructions as to the rule of law to be applied according as they find one state of facts or another: *Hamilton v. Smith*, 39 M. 222.

17. "Probable cause" for prosecution depends on the circumstances of the case, and exists where the generality of business men of ordinary care, prudence and discretion would prosecute under the same conditions: *Ibid.*; *Brand v. Hinchman*, 68 M. 590 (March 2, '88).

18. The true inquiry upon the subject of probable cause in an action for malicious prosecution is, not what the actual facts were as to plaintiff's guilt or innocence, but what defendant had reason to believe and did believe they were: *Galloway v. Burr*, 32 M. 332.

19. Facts which came to the knowledge of defendant's counsel while investigating the alleged offence, and which were communicated to them before they caused plaintiff's arrest, may be given in evidence on the question of probable cause: *Ibid.*

20. The mere belief of a person making a criminal complaint, that it is true, does not alone justify a prosecution thereunder; it must rest on reasonable grounds and on such facts as would lead a person of ordinary caution to honestly suspect the accused of guilt: *Spalding v. Lowe*, 56 M. 387; *Wilson v. Bowen*, 64 M. 183.

21. Probable cause cannot rest on mere conjecture, nor on an unreasonable interpretation of appearances, especially if the accuser knew of facts that would have explained them, or knew that they were contrived by conspiracy, or other corrupt means, to give a colorable basis for prosecution, or to entrap the accused into admitting guilt of other offences: *Hamilton v. Smith*, 39 M. 222.

22. Want of probable cause can never be inferred from malice: *Ibid.*

23. The burden of proving the want of probable cause is on the plaintiff: *Ibid.*

24. Malice, in cases of malicious prosecution, may lie only in its being wilful, wanton or reckless, or against the accuser's sense of duty, and for ends that he is bound to know are wrong and against public policy: *Ibid.*; *Brand v. Hinchman*, 68 M. 590.

25. Malice may be inferred from the want of probable cause: *Hamilton v. Smith*, 39 M. 222; *Carson v. Edgeworth*, 43 M. 241; *Brand v. Hinchman*, 68 M. 590.

26. Malice may be proved by direct or circumstantial evidence: *Hamilton v. Smith*, 39 M. 222.

27. Malice is not implied from an unfounded prosecution: *Carson v. Edgeworth*, 43 M. 241.

28. The question of malice in an action for malicious prosecution is for the jury alone: *Hamilton v. Smith*, 39 M. 222.

29. The institution of a criminal prosecution for the recovery of a private claim is strong, if not conclusive, evidence of malice: *Galloway v. Burr*, 32 M. 332.

30. An unfounded prosecution cannot be justified, or the prosecutor's malice disproved, by evidence of offences committed by the plaintiff other than those for which he was prosecuted by the defendant: *Carson v. Edgeworth*, 43 M. 241.

31. On the question of whether a prosecution for an assault was malicious it is proper to make allowance for the prosecutor's state of excitement: *Carter v. Sutherland*, 52 M. 597.

32. When one resorts to the best means in his power for information before instituting legal proceedings against another it will be such a proof of honesty as would disprove malice and operate as a defence in proportion to his diligence: *Stanton v. Hart*, 27 M. 539.

33. To sustain the good faith of a complaint for obtaining goods under false pretences the plaintiff need not have actual personal knowledge of the facts, but may rely on such statements, received through the usual channels, as a business man of ordinary prudence would act upon, if he honestly believed them to be true: *Galloway v. Burr*, 32 M. 332.

34. The advice of one who is not a qualified lawyer is not of itself an answer to a charge of malicious prosecution: *Stanton v. Hart*, 27 M. 539.

35. The advice of counsel is no protection if defendant's motive was malicious: *Galloway v. Burr*, 32 M. 332.

36. Where an attorney and client conspire to institute a malicious prosecution the latter cannot justify himself by the other's advice: *Hamilton v. Smith*, 39 M. 222.

II. PLEADING.

37. Where a declaration charging malicious prosecution averred that the plaintiff had been "acquitted and discharged," but also showed facts indicating that there had been a discontinuance instead, and not a trial and acquittal, it was not held such a variance as to invalidate the declaration, the context

showing that the words did not refer to an acquittal on a trial: *Stanton v. Hart*, 27 M. 539.

38. A declaration for malicious prosecution is defective if it does not aver the termination of the suit in the last court to which it was carried. But the defect is formal, and would be cured by a verdict for plaintiff on the merits: *Sutton v. Van Akin*, 51 M. 463.

39. An action for malicious prosecution is now an action on the case; and as matter of pleading a charge of conspiracy in the declaration is mere surplusage and is only matter of aggravation; conspiracy could be proved even if not charged: *Hamilton v. Smith*, 39 M. 223.

40. A count stating that defendant maliciously and falsely, without probable cause, "charged the said plaintiff with having committed a certain offence punishable by law, to wit, uttering and publishing as true a certain false, forged and counterfeit promissory note for the payment of money, knowing said note to be false, forged and counterfeited, with the intent to defraud and injure as aforesaid," and that defendant maliciously, and without reasonable or probable cause, and without investigation or inquiry, caused plaintiff to be arrested and imprisoned for thirteen days, at the expiration of which time he "was duly discharged and fully acquitted," etc., is a charge of malicious prosecution, not of illegal arrest and false imprisonment: *Haskins v. Ralston*, 69 M. 63 (March 2, '88).

III. EVIDENCE.

41. In an action for malicious prosecution for a specific offence, the plaintiff may, if he chooses, show that he did not commit it, although he need show no more than that there was no probable cause for the proceeding against him: *Patterson v. Garlock*, 39 M. 447.

42. In an action for malicious prosecution for a specific theft it is not admissible to show that plaintiff had committed a different theft: *Ibid*.

43. In an action for malicious prosecution it is admissible as bearing upon the question of malice and probable cause to show the anterior personal relations of the parties, and that the defendant had said he was not personally cognizant of the matters on which he had based the prosecution: *Ibid*.

44. In an action for malicious prosecution, conversations between defendant and the prosecuting attorney concerning plaintiff's prior acts for which she had been arrested at defendant's instance upon a charge like that

involved in the present suit, and a magistrate's record of proceedings had before him three years before upon such charge, do not bear upon the questions of probable cause or malice, and are inadmissible in evidence: *Wilson v. Bowen*, 64 M. 133.

45. In an action against a principal for malicious prosecution, its agent was examined for the plaintiff and was asked if he had received a letter and telegram from his superior to go to a certain place and look after defendant's claim. Held error to exclude on cross-examination the question whether the telegram directed him to go and be a witness in the proceeding against the plaintiff: *Turner v. Phoenix Ins. Co.*, 55 M. 237.

46. Defendant in an action for malicious prosecution may testify whether, when he made the complaint upon which proceedings were instituted against the plaintiff, he believed it to be true. Such belief, however, is a question for the jury, and defendant's testimony has no more weight than that of any other witness: *Spalding v. Lowe*, 56 M. 367.

47. Evidence of what third persons had told the witness plaintiff had said to them about his purposes is hearsay, and in an action for malicious prosecution it is inadmissible, on the part of the defence, to excuse the arrest of the plaintiff: *Labar v. Crane*, 56 M. 535.

48. One who sued for malicious prosecution showed that defendant had called him meddlesome and troublesome. Defendant's offer to justify the epithets by showing that plaintiff was reputed to be quarrelsome, meddlesome and vindictive was properly overruled, since the epithets were important only as showing his own feelings: *Ibid*.

49. Advising persons not to become sureties for one who has been arrested does not tend to show that those who give such advice have conspired with the person who caused the arrest, and are therefore liable with him to an action for malicious prosecution. Nor does their enmity toward the person arrested, nor their wish to drive him out of town: *Labar v. Batt*, 56 M. 539.

IV. DAMAGES.

50. The plaintiff is entitled to recover, not merely nominal damages, but such damages as he has actually suffered from the unwarranted arrest and imprisonment: *Tefft v. Windsor*, 17 M. 486.

51. Damages for malicious prosecution may embrace the plaintiff's expense in protecting himself, his loss of time, deprivation of lib-

erty and the society of his family, the injury to his fame and his personal mortification: *Hamilton v. Smith*, 39 M. 222.

52. Plaintiff in an action for malicious prosecution showed by way of damages that his arrest had prevented his accepting the invitation of his son, who was employed upon a certain railroad, to go to a specified place and take a situation on the road. This invitation was contained in a letter, and it did not appear that the son had any authority to promise the situation, so that the letter itself did not tend to show that he could get employment. But as he changed his course of action and suffered inconvenience because of the letter, it was not improper to admit the letter as bearing on the circumstances: *Labar v. Crane*, 56 M. 585.

MANDAMUS.

I. NATURE OF WRIT; JURISDICTION.

II. WHEN GRANTED OR DENIED.

- (a) *General principles.*
- (b) *To courts and judicial officers.*
- (c) *To state officers and boards.*
- (d) *To municipal boards and officers.*
- (e) *To private corporations and individuals.*

III. PROCEEDINGS AND PRACTICE.

- (a) *Parties.*
- (b) *The application.*
- (c) *Order to show cause.*
- (d) *Answer or return; plea; demurrer.*
- (e) *Framing and trying issues.*
- (f) *Hearing; what matters considered or reviewed.*
- (g) *Nature and extent of relief.*
- (h) *Effect of award or denial.*

I. NATURE OF THE WRIT; JURISDICTION.

1. The history and nature of the writ of *mandamus* examined and expounded: *McBride v. Grand Rapids*, 33 M. 860.

2. Where a *mandamus* issues to direct the action of a legal tribunal, proceeding in the course of justice, it is an exercise of supervisory judicial control, and is in the exercise of appellate action. In other cases it is generally, if not always, in the nature of original action: *Barrett v. Bacon*, 18 M. 247.

3. *Mandamus* to a township board is not an appellate proceeding wherein the sufficiency of the evidence to sustain refusal to approve sureties in a liquor bond can be reviewed: *Post v. Sparta*, 64 M. 597.

4. *Mandamus* is a prerogative writ designed to afford a summary and specific

remedy where the party applying for it would otherwise be subjected to serious injustice: *Tawas & B. C. R. Co. v. Iosco Circuit Judge*, 44 M. 479.

5. The remedy by *mandamus* is not adapted to cases calling for continuous action, varying according to circumstances: *Diamond Match Co v. Powers*, 51 M. 145.

6. The supreme court has plenary jurisdiction in *mandamus*: *Tawas & B. C. R. Co. v. Iosco Circuit Judge*, 44 M. 479; *Hosier v. Higgins Township Board*, 45 M. 340.

7. The writ cannot be issued by the circuit court except when necessary to execute the power of supervisory control over inferior tribunals, and when actually required to affect the ends of jurisdiction in cases brought under cognizance by other means: *McBride v. Grand Rapids*, 33 M. 860.

II. WHEN GRANTED OR DENIED.

(a) *General principles.*

8. If a statute imposes a special duty, either in terms or by fair and reasonable implication, and there is no other specific remedy, *mandamus* may be awarded to compel performance of the duty: *People v. State Insurance Co.*, 19 M. 392.

9. The writ, though a prerogative one, is demandable of right in a proper case, yet it is only to be granted in the exercise of a sound legal discretion: *People v. Regents*, 4 M. 98.

10. *Mandamus* is usually a discretionary writ, and is properly denied where its exercise is asked in a matter of policy rather than of right, and where there is no danger of evils serious enough to demand interference: *East Saginaw Water Commissioners v. East Saginaw*, 33 M. 164.

11. *Mandamus* is not a writ of right, and is not usually allowed to those who have been culpably dilatory or otherwise at fault: *Mabley v. Superior Court Judge*, 41 M. 81.

12. The court in its discretion may refuse the writ altogether unless the party seeking it consents to do equity: *Auditor-General v. Saginaw Supervisors*, 62 M. 579.

13. *Mandamus* will be allowed only in furtherance of justice upon a proper case presented. It will not be allowed where it is apparent that it is applied for to gratify the spite of a private individual, or where the relator has instigated, authorized or approved the act complained of: *Hale v. Risley*, 69 M. 596 (April 24, '88).

14. *Mandamus* issues only to compel the recognition of a clear legal right or the per-

formance of a legal duty; it does not issue so long as the right or the duty is disputed or doubtful: *People v. Jackson Circuit Judges*, 1 D. 302; *People v. Branch Circuit Judges*, 1 D. 319; *People v. Wayne Circuit Judge*, 19 M. 296; *Pack v. Presque Isle Supervisors*, 36 M. 377; *Peck v. Kent Supervisors*, 47 M. 477; *Post v. Sparta*, 63 M. 323.

15. *Mandamus*, not injunction, is the proper remedy where nothing remains but the enforcement of a legal duty on a public officer's part: *Webster v. Newell*, 66 M. 503 (June 23, '87).

16. *Mandamus* is not granted where relator has any other adequate legal remedy: *People v. Jackson Circuit Judges*, 1 D. 302; *People v. Branch Circuit Judges*, 1 D. 319; *People v. Wayne County Judge*, 1 M. 359; *People v. Wayne Circuit Judge*, 19 M. 296; *Wiley v. Allegan Circuit Judge*, 29 M. 487.

17. *Mandamus* will not be awarded in cases where another remedy is provided by law: *People v. Washtenaw Circuit Judges*, 1 D. 434.

18. *Mandamus* is the proper remedy for enforcing a specific legal right for which there is no other adequate legal remedy, and it is not excluded by other legal remedies which are not adequate to secure the specific relief needed, nor by the existence of a specific remedy in equity: *La Grange v. State Treasurer*, 24 M. 468.

19. *Mandamus* may issue where other remedies exist, if they are not sufficiently speedy to prevent material injury: *Tuwas & B. C. R. Co. v. Iosco Circuit Judge*, 44 M. 479.

20. Though the writ is generally used to enforce the performance of public rights and duties, it may also be resorted to for the enforcement of private rights, when withheld by public officers: *People v. Macomb Supervisors*, 3 M. 475.

21. *Mandamus* lies only to enforce strict legal rights, and will not be granted to enforce the doing of an act which by law lies in the discretion of the officer refusing to do it: *Houghton County v. Auditor-General*, 36 M. 271.

22. The writ is granted to compel the performance of a ministerial act, but not to inquire into the proper exercise of judicial discretion: *People v. Auditor-General*, 3 M. 427.

23. *Mandamus* does not lie to enforce a contract; as where the relator is a bank, seeking to compel the respondent, an officer of a public board, to deposit with it, as required by law, funds to the custody of which it is entitled under a bid made therefor to the board:

Port Huron Board of Education v. City Treasurer, 57 M. 46.

24. *Mandamus* is not the proper proceeding to try the title to a public office: *People v. Detroit Common Council*, 18 M. 338; *Mead v. Ingham County Treasurer*, 36 M. 416; *Moiles v. Watson*, 60 M. 415; *Tallmadge School District v. Root*, 61 M. 373; *Frey v. Michie*, 68 M. 323 (Jan. 26, '88).

25. Or to try the question of corporate existence: *Chapman v. State Land Office Commissioner*, 26 M. 146.

26. Or to determine the boundaries of the franchises of two municipal boards, claiming the same power of appointment: *Frey v. Michie*, 68 M. 323 (Jan. 26, '88).

27. Remedy by *mandamus* is not precluded by the fact that the respondent may be liable as for a misdemeanor in wilfully neglecting his duty; a criminal prosecution will not secure its performance, and specific compliance can be enforced only by *mandamus*: *Ayres v. State Board of Auditors*, 42 M. 422.

28. The writ being discretionary, the plea of the statute of limitations was entertained and the writ refused, where the answer showed that the claim (upon a contingent county order) was fraudulent, and relator did not ask for the trial of an issue: *Merrill v. Gladwin County Treasurer*, 61 M. 95.

29. Though, where the statute is interposed to prevent the payment of a just claim, the court may refuse to permit the plea to interfere with issuing the writ when the period has been less than ten years: *Ibid.*; *Oceana v. Hart*, 48 M. 819.

(b) *To courts and judicial officers.*

30. A *mandamus* is allowed only to set the inferior jurisdiction in motion; but not for the purpose of requiring it to come to any particular conclusion, or of retracing its steps where it has already acted; and this notwithstanding the party has no other remedy: *People v. Wayne County Judge*, 1 M. 359.

31. *Mandamus* will not lie to review irregularities in the judicial action of an inferior court; error is the proper remedy: *Mabley v. Superior Court Judge*, 32 M. 190.

32. The decision of an inferior court acting judicially upon questions of fact, or of law, if the latter are properly before it for judicial determination, cannot, however erroneous, be reviewed by *mandamus*; but where the case does not, on facts or evidence, legitimately raise the question of law or fact decided, so that the court could act judicially upon it, its action is not properly judicial, and no assumed

determination of the question, or order resting on it, will preclude the remedy by *mandamus* if the case is suited thereto in other respects: *Wiley v. Allegan Circuit Judge*, 29 M. 487.

33. *Mandamus* never lies to review irregularities in the judicial action of an inferior tribunal where the party injured has another adequate remedy: *O'Brien v. Tallman*, 36 M. 13.

34. *Mandamus* is a proper process for setting a court in motion, but not for reviewing its affirmative judicial action, if there is any other effectual remedy: *Lloyd v. Wayne Circuit Judge*, 56 M. 236.

35. *Mandamus* does not lie where the remedy sought is the revision of a final judgment on matters of record, and where everything necessary to a determination may be returned on writ of error: *Olson v. Muskegon Circuit Judge*, 49 M. 85.

36. A *mandamus* will not be issued to compel a circuit judge to make an order, when such order is not necessary to perfect the right of the party applying for the writ: *People v. Wayne Circuit Judge*, 14 M. 33.

37. *Mandamus* does not lie to vacate an order that was not erroneous when made, whatever has taken place since: *Castor v. Allegan Circuit Judge*, 54 M. 318.

38. *Mandamus* does not lie to review the exercise of judicial discretion: *People v. Monroe Probate Judge*, 16 M. 204; *People v. Wayne Circuit Judge*, 20 M. 220; *Evans v. Saginaw Circuit Judge*, 39 M. 123; *Mabley v. Superior Court Judge*, 41 M. 31.

39. *Mandamus* to a circuit judge is denied where the record fails to show upon what papers or showing respondent based the action which it is sought to review: *Jones v. Kent Circuit Judge*, 34 M. 373; *McCarthy v. Monroe Circuit Judge*, 36 M. 274.

40. A *mandamus* from the state supreme court to compel an inferior state court to remove a cause to the United States circuit court upon the application of a defendant who is a citizen of another state is not the appropriate writ for that purpose; and whether it has any jurisdiction to interfere in such cases, *quere*: *Glens Falls Ins. Co. v. Jackson Circuit Judge*, 21 M. 577.

41. Where a cause has been regularly removed, and the court from which it has been transferred assumes to treat it as still within its jurisdiction, and vacates the order of removal, *mandamus* lies to compel it to vacate the latter order: *Rankin v. Wayne Circuit Judge*, 29 M. 115.

42. *Mandamus* to set aside an order of removal to a federal court was denied without

looking into the merits where the record did not show that any application had been made to the respondent to vacate the order: *Le Roux v. Bay Circuit Judge*, 45 M. 416.

43. A motion for an order to show cause why a case should not be transferred was denied where the circuit judge, in the exercise of his statutory power, had passed upon certain disputed facts: *Passmore v. Saginaw Circuit Judge*, 54 M. 237.

44. Where, in a proceeding to compel a return to an alleged appeal from a justice's judgment, the circuit judge has determined that the justice has waived payment of the fee for making return, this decision is conclusive and cannot be reversed on *mandamus* or *certiorari*, if any facts stated by the justice tend to establish it; otherwise it seems that the court's order compelling a return may be vacated by *mandamus*; and as an appellee who has recovered judgment before the justice has a right to have a pretended appeal dismissed for non-performance of any statutory conditions precedent to the perfection of the appeal, he has interest enough in the question of the payment of the fee to entitle him to a review by *mandamus* of the circuit judge's decision. *Mandamus* is the only proper remedy: *Wiley v. Allegan Circuit Judge*, 29 M. 487.

45. *Mandamus* is the proper remedy to correct an order of the circuit that dismisses an appeal from a justice on the ground that the latter's decision was not a judgment, and therefore not appealable; a return to a writ of error would not regularly disclose all the proceedings on the motion to dismiss or the grounds of the dismissal: *Comstock v. Wayne Circuit Judge*, 30 M. 98.

46. *Mandamus* is the proper remedy where an appeal has been improperly dismissed for defects in the bond and affidavit: *Detroit & B. P. R. Co. v. Wayne Circuit Judge*, 27 M. 303.

47. *Mandamus* is not the proper remedy to correct the action of the circuit court in allowing a new affidavit to be filed in an attachment case in the place of a void original: *People v. Branch Circuit Judges*, 1 D. 319.

48. *Mandamus* will not be granted to review the refusal of a circuit court to rescind an order holding a party to bail, where bail was properly demandable; *a fortiori* where special bail had been perfected: *Cohn v. Superior Court Judge*, 40 M. 169.

49. *Mandamus* lies to vacate the service of a civil *capias* wrongfully issued: *Baldwin v. Branch Circuit Judge*, 48 M. 525.

50. *Mandamus* lies to set aside the service

of a summons if made upon one who at the time is outside of the jurisdiction in which he lives, and is there for the sole purpose of attending as a necessary witness in other cases: *Mitchell v. Huron Circuit Judge*, 53 M. 541.

51. *Mandamus* was granted to vacate a default entered upon a plea in abatement filed by unauthorized attorneys and to strike the plea from the files: *Arno v. Wayne Circuit Judge*, 42 M. 362.

52. *Mandamus* is the proper remedy of the party seeking the reversal of a decision of the circuit court on a motion to strike a declaration from the files in a common-law action. The motion and decision would constitute no part of the common-law record, and exceptions could not be alleged to the decision: *People v. Washtenaw Circuit Judges*, 1 D. 434.

53. Whether *mandamus* will lie to get rid of an amendment to a declaration whereby a new and distinct cause of action is introduced and the identity of the cause of action for which the suit was originally instituted is destroyed, *quere*: *Powers v. Kent Circuit Judge*, 30 M. 387.

54. *Mandamus* is the only adequate remedy to vacate an interlocutory order not touching the merits—as here, an order quashing an attachment because founded on an insufficient affidavit, where such affidavit was in fact sufficient: *Müller v. Bay Circuit Judge*, 41 M. 326.

55. *Mandamus* lies to vacate interlocutory orders requiring a garnishee to surrender to a receiver certain notes left with him for collection by one of the principal defendants, and to pay the receiver all sums actually collected thereon, where the garnishee's disclosure does not show that the notes actually belonged to the defendants or either of them: *Townsend v. Cass Circuit Judge*, 39 M. 407.

56. *Mandamus* is the proper remedy to compel a circuit judge to set aside his action appointing himself referee in a cause pending before him: *Woodin v. Phoenix*, 41 M. 655.

57. An order to stay waste is discretionary and will not be compelled by *mandamus*: *Parks v. Marquette Circuit Judge*, 38 M. 244.

58. *Mandamus* lies to vacate an order of discovery compelling the production and deposit of a party's business books if not properly granted: *Cummer v. Kent Circuit Judge*, 38 M. 351.

59. *Mandamus* does not lie to review the setting aside of a reference on cause shown: *Taylor v. Osceola Circuit Judge*, 30 M. 99.

60. *Mandamus* lies to compel the circuit court to vacate its action setting aside a referee's report as against the weight of evidence

and ordering a new trial: *People v. Wayne Circuit Judge*, 18 M. 483.

61. *Mandamus*, it seems, is the most appropriate, if not the only, remedy to review a discontinuance allowed before trial: *Yawkey v. Richardson*, 9 M. 529, 532.

62. *Mandamus* is the proper remedy to review the question of the validity of a notice of trial: *Worth v. Hand*, 30 M. 264.

63. *Mandamus* lies to compel the hearing of a motion for continuance made by parties who have filed no affidavit of merits to prevent inquest: *Begole v. Ionia Circuit Judge*, 32 M. 61.

64. *Mandamus* does not lie to enforce a disputed stipulation to settle a case, even though money has been paid thereunder. The parties to the stipulation are entitled to have the fact as to the settlement tried on a regular issue before a jury: *Leavitt v. Detroit Superior Court Judge*, 52 M. 595.

65. The discretionary power to grant a new trial in the circuit court is not reviewable on *mandamus*: *People v. Wayne Circuit Judge*, 20 M. 220; *Stork v. Sup' Court Judge*, 41 M. 5.

66. Where the affidavit on a motion for a new trial contains something upon which the circuit judge is called upon to exercise his judgment, it becomes a matter addressed to his discretion, and this court has no authority to issue a *mandamus* to direct him to rescind his order: *People v. Branch Circuit Judge*, 17 M. 67.

67. *Mandamus* lies to compel a circuit judge to set aside a verdict and grant a new trial because of the jury's communicating and drinking with others after being sent out to consider their verdict: *Churchill v. Alpena Circuit Judge*, 56 M. 536.

68. The granting or refusing a new trial upon the ground of the jury's misconduct rests in the discretion of the trial judge, and if that discretion is abused *mandamus* is the proper remedy: *Gray v. Barton*, 62 M. 186.

69. *Mandamus* to vacate an order for a new trial in ejectment for want of notice to the opposite party was denied in the court's discretion: *Dennison v. Genesee Circuit Judge*, 37 M. 281.

70. Where a circuit judge set aside a judgment and ordered a new trial on the ground of having discovered, as he supposed, that he had an interest in the case, *mandamus* to vacate his order was refused: *Alderman v. Montcalm Circuit Judge*, 41 M. 550.

71. *Mandamus* to set aside a nonsuit was granted in a case involving peculiar circumstances, and where court below had refused, on reasons relating rather to the public con-

venience than to the mutual rights of the parties, to open the cause: *Lindsay v. Wayne Circuit Judges*, 68 M. 735.

72. *Mandamus* does not lie to review the opening, for alleged errors, of a judgment by default in the circuit court: *Evans v. Saginaw Circuit Judge*, 39 M. 123.

73. An order for costs on opening a default is discretionary, and an order to show cause why it should not be vacated will not be granted: *Miller v. Wayne Circuit Judge*, 39 M. 375.

74. *Mandamus* does not lie to review the discretion of a court in refusing to re-open a judgment that an affidavit of non-execution may be supplied: *Chicago & N. E. R. Co. v. Genesee Circuit Judge*, 40 M. 168.

75. Where it is evident that an order setting aside a judgment would not have been granted but for a stipulation between the parties, the conditions of which have not been complied with, the order cannot be sustained as an exercise of discretion, and *mandamus* will lie to vacate it: *Roche v. Branch Circuit Judge*, 26 M. 870.

76. *Mandamus* will not be granted to compel the circuit court to set aside defective proceedings, when the defects are such as may be obviated by amendment in that court: *People v. Calhoun Circuit Judges*, 1 D. 417.

77. *Mandamus* lies to compel a circuit judge to set aside a judgment irregularly rendered — *e. g.*, without notice of trial — if he refuses to do so: *People v. Bacon*, 18 M. 247.

78. *Mandamus* lies, upon a seasonable application, to compel correction of an erroneous journal entry of judgment: *Frederick v. Me costa Circuit Judge*, 52 M. 529.

79. *Mandamus* to compel the amendment of a judgment for the defendant in replevin so as to require return of the property was denied where the application was not made until several terms of the court after execution had been satisfied, nor until a new judge was elected: *Gray v. Saginaw Circuit Judge*, 49 M. 628.

80. An execution on the judgment in a cause appealed from before a justice was antedated, and a motion to require the sheriff to return it for correction was denied. *Mandamus* to compel the circuit judge to grant the motion was denied, as in any proceeding against the sureties on the appeal bond the facts could be shown: *Jennings v. Kalamazoo Circuit Judge*, 44 M. 99.

81. *Mandamus* will not lie to compel a circuit judge to overrule his finding that the proceedings taken for the condemnation of a

site for a school-house were irregular, and to compel him to enter judgment for the amount found due: *Delhi School District v. Ingham Circuit Judge*, 49 M. 432.

82. *Mandamus* to compel a circuit court to grant relator's motion for a resale upon execution will not issue unless the case made on the motion at the circuit was such as to show a plain legal right: *McCarty v. Monroe Circuit Judge*, 36 M. 274.

83. *Mandamus* to vacate an order setting aside an execution sale after the time for redemption had expired was denied in the discretion of the court: *Stinton v. Kent Circuit Judge*, 37 M. 286; *Wilkie v. Ingham Circuit Judge*, 52 M. 641.

84. *Mandamus* lies to compel the settlement of exceptions properly presented after a trial by the court alone: *People v. Littlejohn*, 11 M. 60.

85. *Mandamus* to compel the settlement and signing of a bill of exceptions was granted where the relator had done all in his power to comply with the orders made for its settlement, and had completed and furnished it in due time: *De Moss v. Van Buren Circuit Judge*, 41 M. 725.

86. *Mandamus* will not be granted to require a circuit judge to sign a bill of exceptions in proceedings held before him on *habeas corpus*: *Faust v. Calhoun Circuit Judge*, 30 M. 266.

87. Nor will it be granted to compel the adoption of a bill of exceptions tendered for settlement by the party taking the exceptions, if the bill adopted was not essentially defective: *Harbaugh v. Wayne Circuit Judge*, 33 M. 259.

88. *Mandamus* to compel amendment of bill of exceptions was denied where one term had passed and assignments of error had been filed by relator: *Fowler v. Manistee Circuit Judge*, 31 M. 72.

89. *Mandamus* to compel allowance of filing of exceptions to special findings was denied where motion for leave had been delayed a long time: *Eggleston v. Kent Circuit Judge*, 50 M. 147.

90. *Mandamus* is the proper remedy to compel the circuit judge to incorporate in a bill of exceptions the evidence bearing on a point which the judge has charged there was no evidence tending to prove: *Crane v. Wayne Circuit Judge*, 24 M. 518.

91. *Mandamus* lies to compel the amendment by the circuit court of records sent up on error: *Scribner v. Gay*, 5 M. 511.

92. Stay of proceedings will not be compelled by *mandamus* for a mere irregularity

in procedure: *Culver v. Superior Court Judge*, 57 M. 25.

93. Where a court below has denied a motion founded on affidavits to stay proceedings on a judgment on the ground that it has been compromised and paid, and the compromise and payment are denied by the plaintiff, the supreme court will not grant a *mandamus* to stay proceedings: *Parker v. Calhoun Circuit Judge*, 24 M. 408.

94. *Mandamus* to compel a circuit judge to stay proceedings for the collection of a judgment was denied where it appeared that he had refused the stay on the ground that the judgment had been assigned before the commencement of the proceedings in garnishment, was subject to a lien for attorney's fees, and was not garnishable at law: *Gunzberg v. Kent Circuit Judge*, 42 M. 591.

95. *Mandamus* does not lie to review the discretion of a circuit judge in refusing a motion to allow one judgment to be set off against another: *Wells v. St. Joseph Circuit Judge*, 39 M. 21.

96. *Mandamus* does not lie to set aside an irregular plea in chancery: *Hunt v. Jackson Circuit Judge*, 41 M. 5.

97. *Mandamus* lies to compel a circuit judge to proceed to the hearing of a chancery cause in open court where such hearing has been regularly claimed, unless an order has been made upon good cause shown directing it to be proceeded in otherwise: *Stebbins v. Barry Circuit Judge*, 27 M. 170.

98. On a bill in chancery to avoid deeds obtained by defendant railroad company for a right of way, the court decreed that the deeds were void, but, as defendant had entered upon the land in good faith believing it had title, ordered that defendant should be enjoined from going on the premises or continuing its work unless it should deposit with the register a sum sufficient to cover any prospective award of damages to be made in condemnation proceedings to be begun within twenty days, and that in case of failure to make such deposit or to take such proceedings within the time, the case should be heard on four days' notice. On failure to agree as to the amount to be deposited, a reference was had, defendant examined witnesses, and at its motion the court fixed the sum. Complainant then applied for a *mandamus* requiring the court to vacate all its orders except the finding that the deeds were void, and directing it to proceed to final decree. *Held*, that a motion below by complainant for final decree was an essential prerequisite to the application here, and further that this court would not, before

final decree, enter upon an investigation of the merits: *Chesebro v. Montgomery*, 70 M. 650 (June 20, '88).

99. *Mandamus* will not lie to compel a court to proceed with a trial that has been enjoined: *Ives v. Muskegon Circuit Judge*, 40 M. 63.

100. *Mandamus* will not lie, whether an appeal does or not, to review an order for the appointment of a receiver for an assigned estate: *Scott v. Wayne Circuit Judge*, 58 M. 312.

101. *Mandamus* lies to vacate a void order appointing a receiver to manage a corporate business, and granting an interlocutory injunction depriving directors of control: *Port Huron & G. R. Co. v. St. Clair Circuit Judge*, 81 M. 456.

102. *Mandamus* lies to vacate an illegal injunction where the party affected thereby would otherwise have to submit to serious injury, or to the risk of proceedings for contempt in disregarding it: *Tawas & B. C. R. Co. v. Iosco Circuit Judge*, 44 M. 479; *Scott v. Chambers*, 63 M. 532.

103. *Mandamus* lies to vacate an injunction where the bill upon which it was granted was devoid of substance, and could not, therefore, support the application for the writ: *Van Norman v. Jackson Circuit Judge*, 45 M. 204.

104. *Mandamus* lies to vacate an order made in one court restraining competent proceedings in another court of co-ordinate jurisdiction: *Maclean v. Speed*, 52 M. 258.

105. A *mandamus* to disturb action by a circuit judge in equity — e. g., to compel the dissolution of an injunction — can issue only upon some exigency that requires prompt action to prevent mischief: *Detroit, L. & N. R. Co. v. Newton*, 61 M. 33.

106. *Mandamus* lies to vacate the setting aside, on mere motion, of a decree in chancery: *York v. Ingham Circuit Judge*, 57 M. 421.

107. *Mandamus* is not the proper remedy to procure a sufficient appeal bond: *Pulte v. Wayne Circuit Judge*, 47 M. 646.

108. A *mandamus* to compel a circuit judge to imprison, for contempt for refusal to answer questions, a complainant in a suit in equity pending in another state, who had been summoned before the judge as a witness under H. S. § 7455, was denied, on the ground that the court in which the suit was pending had power to compel the party to make any proper disclosure by refusing to allow him to proceed until he should do so: *Atchison, T. & S. F. R. Co. v. Jennison*, 60 M. 232.

109. *Mandamus* lies to review the quashing of an indictment and to compel the trial

of a criminal cause: *People v. Swift*, 59 M. 529.

110. *Mandamus* lies to compel a circuit judge to consider a coroner's account for fees and expenses incident to an inquest upon the view of the dead body of a stranger, and, if satisfied that the account is correct, to indorse his order of allowance thereon: *Locke v. Speed*, 62 M. 408.

111. *Mandamus* will not lie to compel a judge of probate to extend the time for proving claims: *People v. Monroe Probate Judge*, 16 M. 204.

112. *Mandamus* lies to enforce a creditor's right to a hearing of his claim against an intestate's estate where the estate is not closed: *Hart v. Shiawassee Circuit Judge*, 56 M. 592.

118. *Mandamus* will not lie to review the refusal of a probate court to grant letters of administration on an intestate's estate: *Campan v. St. Joseph Probate Judge*, 36 M. 500.

114. *Mandamus* will not lie to compel a circuit judge to reinstate an appeal on behalf of one claiming to be purchaser at a probate sale, who does not show that he has tendered payment and performance so as to entitle himself to the rights of a purchaser: *People v. Wayne Circuit Judge*, 19 M. 296.

115. *Mandamus* lies to require a circuit judge to hear an appeal by executors from an order of the probate court disallowing a will: *Cheever v. Washtenaw Circuit Judge*, 45 M. 6.

116. *Mandamus* to compel the probate court to set aside an award of damages in a railroad condemnation proceeding which had been paid under protest was denied where the land had been actually appropriated: *Marquette, H. & O. R. Co. v. Probate Judge*, 58 M. 217.

117. *Mandamus* lies to compel a justice of the peace to assess defendant's damages after judgment of discontinuance against plaintiff in replevin where return is waived: *People v. Tripp*, 15 M. 518.

118. Or to compel a justice who has dismissed a writ of replevin to receive evidence of the value of the property if return is waived: *La Barr v. Osborn*, 38 M. 313.

119. Where a justice refused to enter and render judgment upon a verdict on the ground that it was insufficient, whereas, although not formal, it sufficiently indicated for which party the jury found the issue, a *mandamus* issued to compel him to do so: *Lamberton v. Foote*, 1 D. 102.

120. While *mandamus* may issue to compel a justice, if he refuses, to proceed and enter up a judgment in a case proper for a

judgment, it will not lie to compel him to vacate or change a judgment he has already rendered, and which is subject to be reviewed by *certiorari* or on appeal: *O'Brien v. Tallman*, 36 M. 13.

121. *Mandamus* lies to compel a circuit court commissioner to proceed on an order of reference tendered to him for execution in a foreclosure case: *Warner v. Randall*, 37 M. 473.

122. Or to compel him to tax costs in proceedings under the fraudulent debtor act, and to issue execution for collection thereof: *Watson v. Randall*, 44 M. 514.

123. *Mandamus* lies to compel the commissioners on an estate to return evidence into the probate court where the law requires it: *Buchoz v. Fray*, 37 M. 512.

(c) *To state officers and boards.*

124. *Mandamus* cannot issue to the governor; and his voluntary appearance and professed willingness to abide by the decision of the court, though questioning its jurisdiction, will not give jurisdiction to issue a *mandamus* to him: *Sutherland v. Governor*, 29 M. 320.

125. The performance of the duty imposed upon the governor by the acts of congress making a land grant for the construction of the Portage Lake & Lake Superior Ship Canal, and by the state legislation on the subject, to issue, when satisfied that the work has been done according to law, his certificate of the fact, cannot be enforced by *mandamus*: *Ibid.*

126. *Mandamus* does not lie to review the exercise of political and executive functions when they are not ministerial and would require the court to act outside of judicial authority: *Ayres v. State Board of Auditors*, 42 M. 422.

127. The action of the head of an executive department of the state is not judicial and therefore not subject to direct proceedings for review: *Ambler v. Auditor-General*, 38 M. 743.

128. Executive discretion cannot be judicially reviewed; and where the action of any officer to whom the state confides the auditing of claims against it is anything but ministerial, it cannot be reviewed: *Ibid.*

129. It would require a very clear case of practical acquiescence to authorize the court to compel the head of a bureau of the government to follow precedents which he does not himself regard as binding, unless they are at least so harmonious with the language of the law as to create no repugnance to it: *Employers' Limited Liability Co. v. State Insurance Commissioner*, 64 M. 614.

130. No *mandamus* can issue to a state officer to compel him to perform any but some unquestionable and legally defined duty. Thus, the writ will not be granted to compel the state treasurer to pay a balance claimed to be due on bills of the Government Stock Bank, there being no adjudication that the amount claimed is due from the state: *Bresler v. Butler*, 60 M. 40.

131. *Mandamus* lies to compel the state treasurer to deliver up to the makers for cancellation municipal aid bonds deposited with him under an unconstitutional statute: *Bay City v. State Treasurer*, 23 M. 499; *La Grange v. State Treasurer*, 24 M. 468.

132. *Mandamus* to the secretary of state will not lie to compel him to issue patents to state lands; that is the duty of the governor: *Crane v. Secretary of State*, 51 M. 195.

133. Whether *mandamus* lies to interfere with the action of the auditor-general on matters of a purely public and executive nature, where it is not purely mechanical, but involves the exercise of mixed functions, *quere*: *Ambler v. Auditor-General*, 38 M. 746.

134. *Mandamus* does not lie to compel the auditor-general to pay over to a county moneys which have been withheld from it in the annual settlements, under a mutual mistake of law and by authority of C. L. 1871, § 1090, by which the counties were charged with deficiencies on resales of state tax bids: *Ibid*.

135. *Mandamus* was not granted to compel the auditor-general to accept delinquent tax-lists after July 1 (the day on which he is required by statute to list and advertise the lands for sale), and to credit the counties with the amount thereon: *Houghton County v. Auditor-General*, 36 M. 271.

136. *Mandamus* will not lie, since act 142 of 1887, to compel the auditor-general to issue a warrant for the payment to a county of the money collected under act 222 of 1885, to pay the interest money due under H. S. § 5394 on sales of swamp lands: *Sanilac County v. Auditor-General*, 68 M. 659 (March 2, '88).

137. The court would not, on motion for *mandamus*, inquire into the exercise of the power—judicial in its nature—conferred upon the auditor-general by the act of 1843 (S. L. p. 81), authorizing him in certain cases to forbear to sell or to withhold a conveyance of lands sold for taxes: *People v. Auditor-General*, 3 M. 427.

138. *Mandamus* will not lie in behalf of a county to compel the auditor-general to pay over to the county treasurer the taxes assessed for township, school and highway purposes in the relator's townships; such proceeding being

in effect a suit against the state: *Ottawa Supervisors v. Auditor-General*, 69 M. 1 (March 2, '88).

139. Where money has gone into the state treasury as part of a general balance rightfully received, and not as a separate and independent item wrongfully received, *mandamus* will not lie to require its repayment, nor can any suit be maintained for it unless voluntarily allowed within the authority of some proper officer: *Ambler v. Aud. Gen.*, 38 M. 746.

140. *Mandamus* denied to review the discretion of the attorney-general in refusing to file an information in the nature of a *quo warranto* against a corporation: *Yates v. Attorney-General*, 41 M. 728.

141. Whether the writ would, under any circumstances, be issued to compel him to file an information against his own judgment, *quere*: *Coon v. Attorney-General*, 42 M. 65.

142. *Mandamus* was granted to compel the commissioner of the state land office to issue certificates of purchase pursuant to application and tender: *People v. Pritchard*, 17 M. 888.

143. Or to compel him to issue patents to a county for selections of swamp lands appropriated to it by statute for the construction of a state road: *People v. Commissioner of State Land Office*, 23 M. 270.

144. Or to issue a certificate entitling a purchaser of state swamp lands to a deed, although the taxes have not been paid: *Robertson v. State Land Office Commissioner*, 44 M. 274.

145. But it will not issue to compel him to sell, in 1872, at an appraisal made in 1850, school lands conveyed by void deed in 1850: *Chapman v. State Land Office Commissioner*, 26 M. 146.

146. *Mandamus* to compel the quarter-master-general to receive a claim for a state bounty, provided for by act 27 of 1865, and under § 1 of act 132 of 1871 to examine and allow the claim and forward a certificate to the auditor-general, was denied in 1881 for laches: *Blanchard v. Church*, 47 M. 644.

147. The constitution provided that "No mechanical trade shall hereafter be taught to convicts in the state prison, in this state, except the making of those articles of which the chief supply for the consumption of the country is imported from other states or countries." What trades are within the spirit of this provision it is for the agent of the state prison to determine, and the supreme court cannot, on *mandamus*, control him in this regard: *People v. State Prison Inspectors*, 4 M. 187.

148. *Mandamus* denied to compel the state board of auditors to consider relator's claim for extra services in compiling the statutes: *Dewey v. State Board of Auditors*, 82 M. 191.

149. The board of state auditors is made by the constitution an independent tribunal over which the courts have no supervisory control, and the supreme court has no jurisdiction by *mandamus* to coerce or direct its action: *Ibid.*

150. The supreme court exercises no control over the board of state auditors in its disposition of claims against the state, not provided for by general law: *Ambler v. Auditor-General*, 38 M. 746.

151. *Mandamus* lies to compel the board of state auditors to perform mandatory duties imposed on it by the legislature outside of the exclusive powers vested in it by Const., art. 8, §§ 4, 5: *Ayres v. State Board of Auditors*, 42 M. 422.

152. For example, the writ was granted to compel the board to take action to carry out the provisions of the act in regard to the publication of the state reports: *Ibid.*

153. The state board of auditors called for proposals for all kinds of printing as one bid, without any estimate of the different kinds of work, and without indicating any basis on which the board might determine who was lowest bidder. The relator and others sent in bids, and the board awarded the contract to another than the relator, professing to ascertain which bid was lowest by taking as a basis the printing for the two preceding years. The relator, on a showing that the public and the bidders had no means of making estimates on such a basis, and no reason to suppose it was to be adopted, and on a claim that its bid on any fair estimate was lowest, and that the letting was void, applied for a *mandamus* to compel the board to invite new proposals. On the showing, it appearing that the board had followed the practice of its predecessors—*Held*: (1) That as there was nothing to impeach the good faith of the board, and as there was no reason to believe the difference in favor of relator's bid, if any, was insignificant, the court on that ground might decline to interfere. (2) That the relator, having participated in the lettings and made no objections until after the board had announced its decision, was not then in position to dispute, in his own interest, the validity of the previous action. (3) That the court might properly refuse to interfere by *mandamus*, since the effect might be indirectly to annul a contract; and *mandamus* is not a proper proceeding for that purpose:

Detroit Free Press Co. v. State Board of Auditors, 47 M. 185.

154. *Mandamus* will not lie against a public board at the suit of an employee thereof for redress for a breach of contract, but he may have a claim for damages: *Portman v. State Fish Commissioners*, 50 M. 258.

As to *mandamus* to regents of university to appoint professor of homœopathy, see UNIVERSITY, §§ 7-10.

(d) *To municipal boards and officers.*

As to *mandamus* in cases where approval of liquor bonds is sought, see INTOXICATING LIQUORS, §§ 91-100.

155. It is within the province of courts to restrain public bodies and officers of counties and other municipal divisions from exceeding their jurisdiction, and to require them to perform such specific duties as the law imposes on them: *Attorney-General v. Iron County Canvassers*, 64 M. 607.

156. The performance of a ministerial duty may as well be enforced when it rests upon an aggregate body like the common council as when incumbent upon a single officer: *Park Com'rs v. Detroit Common Council*, 28 M. 228.

157. *Mandamus* for the payment of money can issue at the instance of one municipal corporation against another only when there are statutory or legal relations between them to authorize it, and the obligation to pay has been legally liquidated: *Midland School Districts*, 40 M. 551.

158. *Mandamus* to compel one municipality to pay an indebtedness to another as agreed upon by representatives of both was denied where the proceedings to determine the debt did not clearly appear to be those prescribed by statute: *Portsmouth v. Bay City*, 57 M. 420.

159. *Mandamus* will not lie to compel a county to pay ditch orders at the instance of one not clearly showing himself to have title thereto: *Brownell v. Gratiot Supervisors*, 49 M. 414.

160. *Mandamus* being a discretionary writ, its issue to compel the payment of a county order will be refused, although less than ten years have elapsed, when the answer sets up the plea of the statute of limitations, and also shows that the claim is fraudulent, and the relator does not ask for the trial of an issue to determine the fact of fraud: *Merrill v. Gladwin County Treasurer*, 61 M. 95.

161. *Mandamus* is the proper remedy to enforce the payment by a municipal corpora-

tion of an official salary, the amount of which is fixed: *McBride v. Grand Rapids*, 47 M. 286.

162. *Mandamus* was not allowed to enforce the payment of a claim for salary as a city officer where the relator first elected to sue in *assumpsit*, but left the action undetermined, and, after ten years had passed from the date of his claim, sought his remedy by *mandamus* from the supreme court: *Walcott v. Jackson*, 51 M. 249.

163. *Mandamus* lies to compel the board of supervisors to apportion upon the taxable property of the county the sum properly certified to be due from the county to the state on account of taxes: *Auditor-General v. Jackson Supervisors*, 24 M. 237.

164. *Mandamus* is granted to compel the supervisors to spread upon the tax-rolls of their county a sum lost by the state in consequence of the failure of the county treasurer to account for moneys received at a tax sale conducted by him: *Attorney-General v. St. Clair County Supervisors*, 30 M. 388.

165. Under H. S. § 483 it requires a popular vote to authorize a county to borrow or raise by tax for building purposes more than \$1,000 in any one year; and *mandamus* is refused to compel provision to be made by taxation to pay warrants amounting to \$2,640, purporting to have been issued by a board of supervisors for county building purposes between June, 1874, and January, 1875, where the question of raising or borrowing this money has never been submitted to a vote of the people and where the relator had notice of the invalidity of the warrants: *Pack v. Presque Isle Supervisors*, 36 M. 377.

166. *Mandamus* lies to compel the board of supervisors to admit a member duly certified as elected: *Robinson v. Cheboygan Supervisors*, 49 M. 321.

167. Where the charter of Eaton Rapids provided that the mayor should represent that city in the county board of supervisors, *mandamus* was granted to compel the board to recognize him: *Smith v. Eaton Sup'rs*, 56 M. 217.

168. *Mandamus* may be granted to compel the board of auditors of Wayne county to deliver their warrant on the county treasurer to the person in whose favor an account has been allowed. And it is no answer to the application that such a warrant was made out, but, before delivery, was taken on execution against the payee, and the money received thereon by the officer from the county treasurer,—such a warrant not being the subject of levy on execution: *People v. Wayne Auditors*, 5 M. 223.

169. Upon petition for *mandamus* to com-

pel a county board to pay to a township which had been set off from the county a balance shown by the county books to be due, the answer stated no facts from which error in the books could be inferred. The writ was granted: *Roscommon v. Midland Supervisors*, 49 M. 454.

170. The police justice of Grand Rapids has no authority to proceed against the supervisors of the county by *mandamus* to compel them to audit and allow to the city the fees charged by the act creating the police court, upon the county, in cases tried before him; the act being construed to require him to collect the costs imposed by him upon individuals, but not such as were payable by the county to the city under the same: *McBride v. Kent Supervisors*, 88 M. 421.

171. *Mandamus* was granted to compel a board of supervisors to provide for the payment of a balance credited upon the books of the county to a certain township which belonged, with another, to a county set off from the first, the credit having been made in pursuance of a mutual agreement between the townships and the county indebted: *Higgins v. Midland Supervisors*, 52 M. 16.

172. The Wayne county board of auditors may be compelled by *mandamus* to refund a fine, the judgment under which it was imposed having been reversed on *certiorari*, and the fine having been paid to avoid imprisonment: *McMahon v. Wayne Auditors*, 41 M. 223.

173. *Mandamus* lies to compel a board of supervisors to allow a claim that is by law made a charge upon the county: *People v. Macomb Supervisors*, 3 M. 475; *People v. Wayne Auditors*, 18 M. 233.

174. *Mandamus* lies to compel a board of supervisors, when a claim is made against the county, to give claimant a hearing and to decide the claim: *Peck v. Kent Supervisors*, 47 M. 477; *Cicotte v. Wayne*, 59 M. 509.

Further as to *mandamus* to boards of supervisors, and as to the finality of their action upon claims, see COUNTIES, §§ 61-91.

175. *Mandamus* to compel the common council of Detroit to order the issuing of bonds to purchase lands for a park contracted for by the board of park commissioners was denied: *Park Commissioners v. Detroit Common Council*, 28 M. 228.

176. *Mandamus* was granted to compel the common council of Detroit to consider and act upon the mayor's nominations made under the act establishing a board of public works: *Attorney-General v. Detroit Common Council*, 29 M. 103.

177. *Mandamus* asked by the board of water commissioners of East Saginaw to compel the common council to levy a tax to pay bonds issued by the board, and about to mature, was *denied*, as the board had a remedy, by issuing new bonds, to meet the old ones: *East Saginaw Water Commissioners v. East Saginaw Common Council*, 33 M. 164.

178. *Mandamus* to compel payment to a contractor from a special assessment was *denied* where the assessment had been adjudged invalid in a suit brought by a tax-payer to recover back what he had paid: *Gebhart v. East Saginaw*, 40 M. 336.

179. The charter of Port Huron makes the common council the final judges of the election of aldermen. *Held*, that *mandamus* would not lie to compel them to reinstate one whom they had excluded without a proper hearing on the merits: *Cooley v. Fitz Gerald*, 41 M. 2.

180. *Mandamus* is the proper remedy to enforce the payment of city orders drawn upon a specific fund, where the fund is supplied: *Second National Bank v. Lansing*, 25 M. 207.

181. *Mandamus* is the remedy against a municipal corporation for its improper refusal to pay orders properly drawn upon it for the payment of liquidated claims: *Peterson v. Manistee*, 36 M. 8.

182. Where, after the division of a township, the town boards have met and determined the amount of the township indebtedness to be paid by the new township, such amount is a fixed and liquidated demand against the new township, which it is the duty of its town board to allow and issue orders for. If the town board refuse to perform this duty, *mandamus* is the proper remedy, and not an action against the township: *Marathon v. Oregon*, 8 M. 373.

183. *Mandamus* against the town officers in case of their neglect to do their duty is the proper remedy to compel the payment of an established demand against a township: *Dayton v. Rounds*, 27 M. 82.

184. *Mandamus*, and not an action against the township, is the proper remedy to enforce payment of orders regularly drawn by the highway commissioners upon the township treasurers: *McArthur v. Duncan*, 34 M. 27; *Just v. Wise*, 42 M. 573.

That in the federal courts a judgment on a liquidated demand must precede a *mandamus* for collection, see COURTS, § 132.

185. *Mandamus* to pay a township order based upon a settlement which the answer claimed to be wrong was limited to the amount conceded by the answer to be due,

no issue of fact being made; but the allowance of the writ was without prejudice to any action by either party for the correction of the error: *Murphy v. Reeder*, 57 M. 419.

186. *Mandamus* does not lie to compel a city to pay an unliquidated demand, such as a claim on a *quantum meruit* for the value to the city of services performed and materials furnished on a contract which was afterwards forfeited: *Michigan Paving Co. v. Detroit*, 34 M. 201.

187. *Mandamus* will not lie to compel highway commissioners to proceed to rebuild a destroyed bridge where the cost would greatly exceed the amount prescribed by statute: *Goodsell v. Post*, 30 M. 353.

188. *Mandamus* will not be issued to compel a township board to repair a public bridge: *Perrine v. Hamlin*, 48 M. 641.

189. A township issued plank-road bonds which were invalid. The bonds were negotiated and the township was afterwards divided. *Held*, that the judgment, in a subsequent action on the bonds, to which the new township was not a party, was not binding on it; and *mandamus* will not lie to compel the township board of the new township to meet with the township board of the old one to apportion the indebtedness arising on the bonds: *Hale v. Baldwin Township Board*, 49 M. 270.

190. *Mandamus* is not the proper remedy for compelling a township to refund the amount of a tax unlawfully levied if there is any issue involved which should go to the jury: *Byles v. Golden*, 52 M. 612.

191. *Mandamus* does not lie to compel a township to raise money to pay bonds so long as it is an open question whether the bonds are a legal obligation on the township and whether the relator is a *bona fide* holder of them: *Loomis v. Rogers*, 53 M. 136.

192. *Mandamus* will be granted to compel a ward board of registration to meet and hear the claim of a party to be registered as a voter; and it will be no answer to the application therefor that the case has been reserved for the consideration of the city board when it was the duty of the ward board to pass upon it: *People v. Detroit Board of Registration*, 17 M. 427.

193. *Mandamus* lies to compel the sheriff to imprison a person convicted under the bastardy act when necessary to compel him to contribute to the child's support: *Waite v. Washington*, 44 M. 388.

194. *Mandamus* lies to compel the county treasurer to keep his office at the county seat: *Rice v. Shay*, 43 M. 380.

195. Or to permit the inspection of liquor

bonds filed in his office: *Brown v. County Treasurer*, 54 M. 132.

196. Or to pay over to the proper local officers the amount of liquor taxes to which they are entitled by the law: *East Saginaw v. County Treasurer*, 44 M. 273.

As to *mandamus* to compel township treasurer to pay over library moneys, see *SCHOOLS*, § 99.

197. *Mandamus* to compel a county clerk to issue a certificate of election to a person shown by the returns to have been legally elected was denied when it would not have given substantial relief, and the question might be raised again in an issue as to the accuracy of the returns or by proceedings in the nature of *quo warranto*: *Sherburne v. Horn*, 45 M. 160.

198. *Mandamus* is not the proper remedy to compel a county clerk to return to the supreme court files that have been remitted to him by mistake: *Wright v. Huron County Clerk*, 48 M. 642.

199. *Mandamus* does not lie at the suit of a grantee to compel a register of deeds to record a deed delivered to him in *escrow* and withheld by the grantor's order: *Austin v. Curtis*, 41 M. 723.

200. *Mandamus* requiring a register of deeds to allow relators and their clerks to inspect and copy the records for the purpose of making a set of books of abstracts of title was refused: *Webber v. Townley*, 43 M. 534.

201. And if the writ could be awarded at all for such a purpose as the above, it would be denied to a private foreign corporation where such corporation showed no authority from the state of its origin to deal in lands or land-titles: *Diamond Match Co. v. Powers*, 51 M. 145.

202. *Mandamus* lies to compel a town clerk to issue the proper certificate for the levy of a tax to satisfy a judgment against the township, even though the cause of action arose in territory that was set off as a new township after it arose and before judgment: *Courtright v. Brooks Township Clerk*, 54 M. 182.

203. On an application for *mandamus* to require the county treasurer to pay an order drawn by persons claiming to be superintendents of the poor, the legal title of the officers will not be tried; but it appearing on the record that their appointment was unauthorized, *mandamus* will not be granted unless it appears that, notwithstanding the want of title, they have got actual possession and are generally reputed to be such officers, and are hence officers *de facto*: *Mead v. Ingham County Treasurer*, 36 M. 416.

204. *Mandamus* was granted to compel payment of a proper order made upon the township treasurer by a commissioner of highways who was performing the duties of his office though he had not filed an official bond: *Mackenzie v. Baraga Township Treasurer*, 39 M. 554.

205. *Mandamus* lies to compel a township treasurer to pay to relator so much of the money in his hands as is covered by the warrant of a school director drawn in relator's favor and in proper form, even though it does not specify a precise sum, but is for all such money in his hands as was raised for the purposes of the school district and belonged thereto: *Bryant v. Moore*, 50 M. 225.

206. Where a liquor tax belonging to a village was assessed and collected by township officers and used for township purposes, a *mandamus* was granted to compel its payment over to the village authorities: *Decatur v. Decatur*, 38 M. 885.

207. *Mandamus* to compel a township treasurer to pay a certain sum upon the order of the township board was withheld where the treasurer set forth in his return to the order to show cause that the township had by resolution directed him not to pay, and that there were no moneys in his hands with which to pay: *Murphy v. Reeder Township Treasurer*, 56 M. 505.

208. *Mandamus* does not lie to compel aldermen to attend meetings of the common council, and to perform their general official duties regularly: *Fitzgerald v. Whipple*, 41 M. 548.

209. *Mandamus* will lie to compel the recorder of a village to fulfil the duty, imposed upon him by the charter, of advertising and selling lands returned for delinquent paving taxes; and he cannot refuse to do so on the ground that he believes the action of the council in laying the particular tax to be illegal, especially if the proceedings are sufficiently fair on their face to protect ministerial action, and the work has been done and the tax in a great measure paid in: *Hudson v. Whitney*, 53 M. 158.

210. A board of education is entitled to *mandamus* to compel its treasurer to pay its funds to the proper depository under the law: *Port Huron Board of Education v. City Treasurer*, 57 M. 46.

211. *Mandamus* lies to compel a school-district moderator to countersign order on township treasurer: *Burns v. Bender*, 36 M. 195.

212. *Mandamus* to compel a school-district assessor to pay a school order was allowed

where the court was satisfied there was no valid defence: *Martin v. Tripp*, 51 M. 184.

213. *Mandamus* lies on relation of a school-district assessor to compel the clerk of a township to which the district formerly belonged to certify to the supervisor of the township to which it now belongs the amount ascertained by the school inspectors as due to the relator's district from what remained of the old district out of which it was erected: *Ramsey v. Everett Town Clerk*, 52 M. 344.

As to *mandamus* to compel payment of school orders, see SCHOOLS, §§ 87, 88.

(e) *To private corporations and individuals.*

214. A *mandamus* will be granted on behalf of the insurance department to compel an insurance company to submit to an inspection of its affairs: *People v. State Insurance Co.*, 19 M. 392.

215. *Mandamus* is a discretionary writ and will not usually lie to settle the controversies of private corporations where the facts are not important on public grounds, or would not justify the interference of the court if corporate authority did not exist: *Lamphere v. Grand Lodge United Workmen*, 47 M. 429.

216. The supreme court will not interfere with the internal regulation of private corporations in the enforcement of their rules unless under very peculiar circumstances of substantial wrong: *Hargnell v. Lafayette Benevolent Society*, 47 M. 648.

217. *Mandamus* to compel a religious corporation to restore to membership a person whom it had expelled was refused in the discretion of the court, where the society had no property and it would be destroyed if the relator were restored to membership, and where he had acted in hostility to its interests and given grounds for regular removal: *Meister v. Anshei Chesed Congregation*, 87 M. 542.

218. The only ground on which the supreme court can interfere with organized bodies by *mandamus* in aid of a member is that, as corporations, they are subject to judicial oversight to prevent their depriving members of corporate privileges illegally. The writ will not lie where such bodies are not corporations, or where the question presented does not involve tangible and valuable corporate privileges: *Burt v. Michigan Grand Lodge*, 66 M. 85 (May 5, '87).

219. The purely social relations which members of a corporation hold, not by virtue of their corporate condition, but because of

their connection with a general fraternal body, cannot be regulated by *mandamus*. So held where an incorporated Masonic lodge undertook to discipline by expulsion therefrom a Mason who had never belonged to that lodge: *Ibid*.

220. An incorporated voluntary society may be compelled by *mandamus* to restore to one of its members a substantial right of which he has been deprived by the action of the society in violation of its constitution: *Roehler v. Mechanics' Aid Society*, 22 M. 86.

221. *Mandamus* granted to compel the recognition of a member of a subordinate lodge of the grand lodge of the Ancient Order of United Workmen, incorporated under H. S. § 8949, who had been suspended for refusing to pay a relief assessment made under the orders of the supreme lodge, a Kentucky corporation: *Lamphere v. Grand Lodge United Workmen*, 47 M. 429.

222. A motion for an order to show cause why *mandamus* should not issue to compel the reinstatement of relator in a Masonic lodge from which he had been expelled was refused where he had previously appealed for redress to the tribunal established by the order for hearing such complaints and the expulsion had been confirmed: *Burt v. Grand Lodge*, 44 M. 208.

223. If a member of a corporation voluntarily subjects himself to arbitration, the supreme court will not undertake to review the action of extrajudicial bodies and intermeddle with their action in the course of delegated power: *Allnutt v. Subsidiary High Court*, 62 M. 110.

224. *Mandamus* is not a proper remedy to compel a private corporation to pay dividends which it has declared; still less when any other question exists as to the rights of the person claiming to be entitled to them: *Van Norman v. Central Car & Manuf. Co.*, 41 M. 166.

225. *Mandamus* does not lie to compel a mutual benefit company to levy an assessment to pay the amount falling due upon the death of a member; the proper course is to bring suit upon the undertaking of the company; nor does it make any difference that the company has no funds to pay the judgment: *Burland v. Northwestern Mut. Benefit Assoc.*, 47 M. 424; *Bates v. Detroit Mut. Ben. Assoc.*, 47 M. 646.

226. *Mandamus* will not lie to compel the officers of a mutual benefit association to levy an assessment on its members for the payment of a judgment rendered upon a certificate of membership. The remedy is in equity: *Miner*

a *Michigan Mut. Benefit Assoc.*, 65 M. 84 (Feb. 10, '87).

227. A corporator may apply for a *mandamus* to compel the custodian of the corporate records and documents to allow him an inspection of them. But he must show that he has made a proper demand for such inspection, at a proper time and place, and for a proper reason. The writ will not be granted to enable a corporator to gratify idle curiosity: *People v. Walker*, 9 M. 328.

228. Where, therefore, a corporator demanded of the secretary of the corporation an inspection of its books, records and papers, and the demand was not shown to have been made at the office of the corporation, and no excuse was given for not making it there, and the only ground stated for the application was that the corporator had a desire "to ascertain the rights, duties, privileges and liabilities, and for the protection" of the corporator, the writ was refused: *Ibid.*

229. *Mandamus* does not lie to compel a guardian to pay a claim against his ward which the probate court has adjudged valid; the proceeding must be by action: *Smith v. Burton*, 48 M. 643.

III. PROCEEDINGS AND PRACTICE.

(a) *Parties.*

230. Respondents in *mandamus* proceedings are entitled to insist that they shall not be drawn into litigation by any one who cannot properly be relator, nor deprived of the responsibility of an actual proper party to the record: *McBride v. Kent County Supervisors*, 38 M. 421.

231. The attorney-general is not a proper relator in proceedings by *mandamus* to compel a justice of the peace to entertain a complaint where the offence charged is against individual interests and does not affect the public welfare: *Attorney-General v. Detroit Police Justice*, 41 M. 224.

232. A private individual can apply for a writ of *mandamus* only in a case where he has some private or particular interest to be subserved, or some particular right to be protected by the aid of this process, independent of that which he holds in common with the public at large: *People v. State Prison Inspectors*, 4 M. 187.

233. Whether a private individual can apply for the writ to restrain the agent of the state prison from teaching the trade of or the manufacture of the articles made by the relator, *quere: Ibid.*

234. A private citizen cannot, in a matter where he is not directly injured, apply for a *mandamus* to compel the performance of an omitted duty by a public board; though cases might arise where the court would permit it, in the absence of the attorney-general or prosecuting attorney, or his refusal without good cause to act: *People v. Regents*, 4 M. 98.

235. A county officer removed his office to a place to which he claimed the county seat had been removed by action of the supervisors and electors; application being made by a private individual for a *mandamus* to compel him to return to the former county seat, and there being no showing that the proper public officer, on being requested, had refused to make any application himself, or that the relator had any special interest in the matter not common to citizens generally, it was refused. If *mandamus* can be resorted to for such a purpose (see *supra*, § 194), the proper public officer to apply for it in the supreme court is the attorney-general: *Delbridge v. Green*, 29 M. 121.

236. But the rule rejecting the intervention of private complainants against public grievances is one of discretion, and a private person who would be a competent bidder under a state law for letting a contract may appear as relator by his own counsel in a proceeding by *mandamus* to compel state officers to carry out the law, if the public interest requires prompt action and the attorney-general declines to appear for him: *Ayres v. State Board of Auditors*, 42 M. 422.

237. The board of water commissioners of East Saginaw is a proper relator to an application to compel the common council to levy a tax to pay bonds issued by the board and about to mature: *East Saginaw Water Commissioners v. East Saginaw Common Council*, 33 M. 164.

238. The father may be relator in an application for the writ to compel the admission of his child to the public schools: *People v. Detroit Board of Education*, 18 M. 400.

239. The child's mother is a proper relator in a writ to compel the sheriff to imprison a person convicted under the bastardy act when necessary to compel him to contribute to the child's support: *Waite v. Washington*, 44 M. 388.

240. A *mandamus* directing the action of a judicial tribunal is to be regarded as directed to the judge officially, and as binding the incumbent, whoever he may be, and not merely the judge who denied the application and has since ceased to hold the office: *People v. Bacon*, 18 M. 247.

241. *Mandamus* proceedings against an officer, merely as an official, are not affected by a change of incumbency: *Reeder v. Wexford County Treasurer*, 37 M. 351.

242. Proceedings in *mandamus* do not abate by expiration of defendant's office, where there is a continuing duty irrespective of the incumbent, and the proceeding is undertaken to enforce an obligation of the corporation or municipality to which the corporation is attached: *Thompson v. United States*, 103 U. S. 480.

243. It seems that evidence is admissible to show that an attempted resignation of an officer who is a defendant in *mandamus* proceedings was simulated and fraudulent: *Ibid.*

244. *Mandamus* to settle a case for review will not issue to a judge who has resigned since filing his answer to the order to show cause. Relief should be asked from his successor: *De Haas v. Newaygo Circuit Judge*, 46 M. 12.

(b) *The application.*

245. Where one seeks by *mandamus* to compel a public officer to perform a duty prescribed by statute, he must show by his application that all the conditions necessary to create the duty exist. It is not sufficient to show facts from which their existence may be inferred: *People v. Woodhull*, 14 M. 28; *People v. Wayne Circuit Judge*, 19 M. 296.

246. A petition for *mandamus* must show a clear legal duty resting upon the persons or tribunal against whom the remedy is sought, which they refuse, on request, to perform; and it does not show this if the request embraces anything which it would be illegal for them to do: *Butler v. Saginaw Supervisors*, 26 M. 22.

247. Where a child was refused admission to the public schools on account of his color, it will be no answer to his application for this writ that he does not show himself otherwise entitled: *People v. Detroit Board of Education*, 18 M. 400.

248. A relator or respondent who relies on official records to establish his right must produce such records or certified copies thereof with his petition or answer; it is not enough to refer to the originals: *Cronin v. Kalkaska Supervisors*, 58 M. 448.

(c) *Order to show cause.*

249. An order to show cause why a peremptory *mandamus* should not issue has, in the supreme court, been uniformly substituted for an alternative *mandamus*: *People v. La*

Grange Township Board, 2 M. 187; *Roscommon v. Midland Supervisors*, 49 M. 454.

250. The writ of *mandamus* is meant to be a speedy and summary remedy, whose chief value would be destroyed by the delays and complications of special pleadings, authorized under the practice of alternative or double writs: *Roscommon v. Midland Supervisors*, 49 M. 454.

251. On a motion for a peremptory *mandamus* the court will not allow the relator to amend his order on the respondent to show cause, where it is too broad and asks more than he is entitled to, so as to include that only to which he is entitled: *People v. La Grange Township Board*, 2 M. 187.

252. Evasion of an order to show cause, where no alternative order is granted, is not, upon the return thereto, open to any further redress than the issue of a peremptory writ, with costs: *Potter v. Homer Common Council*, 59 M. 8.

253. The fine provided by H. S. § 8669 for not obeying a *mandamus* cannot be imposed for failure merely to make return to an order to show cause: *Fletcher v. Kalamazoo Circuit Judge*, 39 M. 301.

(d) *Answer or return; plea; demurrer.*

254. An alternative *mandamus* is answered by a return, which is in the nature and performs the office of a plea; while the order to show cause is answered by affidavit: *People v. La Grange Township Board*, 2 M. 187.

255. An answer to an order to show cause is disregarded if only drafted by the attorneys in the case without being submitted to the respondent and approved by him. But the case may be treated as on demurrer to the relator's showing: *Douglass v. Manistee Circuit Judge*, 42 M. 495.

256. If the return states that the respondent has no knowledge concerning a fact necessary to the relator's case, it will be sufficient to put such fact in issue: *People v. Ryan*, 17 M. 159.

257. An order to show cause why a township should not pay a town order is fully met by a return showing that it was fraudulently issued without consideration and without any allowance by the proper authorities: *Noble v. Paris*, 56 M. 219.

258. A person who claimed to be the holder and owner of certain ditch orders asked for a *mandamus* to compel the board of supervisors to provide for their payment. The board answered that they had no knowledge as to whether the relator was holder and

owner of the orders as claimed. *Held*, that the answer was proper: *Brownell v. Gratiot Supervisors*, 49 M. 414.

259. Record issues should be set forth as they stand, in showing cause in cases involving a settlement of public accounts between townships and counties: *Higgins v. Midland Supervisors*, 52 M. 16.

260. Where a circuit judge is called upon to show cause against a *mandamus*, his return, stating the facts as to his own action, and what occurred in connection therewith within his own knowledge, must be conclusively taken to be true, and an issue of fact cannot be made upon it: *Orr v. Wayne Circuit Judge*, 23 M. 536.

261. The return to an order to show cause is taken as true if no issue is made upon it: *Murphy v. Reeder Township Treasurer*, 56 M. 505; *Farnsworth v. Kalkaska Supervisors*, 56 M. 640; *Hickey v. Oakland Supervisors*, 62 M. 94; *Post v. Sparta*, 63 M. 323.

262. In *mandamus* cases where the matter is heard on petition and answer, the answer is to be taken as true; and where the answer states that certain officers who, it was claimed, had been illegally removed, have retained the files and records of their offices, have constantly denied the right to make the removal, and have continued to act as officers, is conclusive against the claim of the new appointees that they have acted as such officers with general acquiescence in their right: *Mead v. Ingham County Treasurer*, 36 M. 417.

263. Where the answer is responsive or does not admit relator's case, and he sees fit to go to a hearing on the pleadings, the answer is taken as true, and determines the propriety of issuing the writ: *Merrill v. Gladwin County Treasurer*, 61 M. 95.

264. The return, if demurred to, must be taken as true: *Edwards v. United States*, 108 U. S. 471.

265. Facts set up by respondent in his return to an order to show cause are admitted by the relator if, when an issue is framed, they are not submitted to the jury: *Lcomis v. Rogers Township Board*, 58 M. 135.

266. It seems that affidavits in answer to an order to show cause cannot be assumed to be evasive, and if so in fact the respondent will be bound by them according to the interpretation evidently intended: *Attorney-General v. Sanilac Supervisors*, 42 M. 72.

267. *Ex parte* affidavits returned by a circuit judge in response to an order to show cause why he should not grant a motion will not be received if they were not used on the

motion: *Churchill v. Alpena Circuit Judge*, 56 M. 536.

268. The respondents having failed to make answer to the order to show cause why *mandamus* should not issue against them as prayed, the facts alleged in the petition for the *mandamus* are taken as admitted: *Davis v. Lansing Common Council*, 31 M. 490.

269. The plea of non-service of the writ is inadmissible where the defendant appears and makes return: *Edwards v. United States*, 108 U. S. 471.

270. Where a petition for a *mandamus* to compel a sale of certain public land simply alleged that the land in question was subject to entry at a specified sum on July 1, 1850, a demurrer thereto did not admit that it was subject to such entry at any subsequent time: *Chapman v. State Land Office Commissioner*, 26 M. 146.

(e) *Framing and trying issues.*

271. On petition for *mandamus* to compel the payment of highway orders the parties should frame their issues on the answer, if it denies the validity of the orders; it is immaterial to reply that in a certain suit the judge had made a finding sustaining the orders, and to rejoin that a full finding was not requested, and make surrejoinder that it was, and *similar*: *Just v. Wise*, 47 M. 511.

272. Where a *mandamus* was petitioned for to compel payment upon certain orders issued upon estimates made under a grading contract, and the supreme court did not regard the estimates as final, it directed the framing of an issue to be tried by jury below to determine the exact amount of work done under the contract, the whole amount of orders issued under it, and the difference, if any, between the sum earned and that included in the orders: *Whitely v. Lansing*, 27 M. 131.

273. If by its return a board of registration denies relator's right to be registered as a voter, an issue will be directed to determine the fact: *People v. Nankin Board of Registration*, 15 M. 156.

274. H. S. ch. 299 provides that in *mandamus* proceedings there may be a trial of certain issues of fact in the county where the facts arose, in the same way as in an action on the case for false return. *Held*, that this relates to cases where a writ of *mandamus* has been first issued and a return made under which issues of fact or law are framed—a practice which is not customary here: *Roscommon v. Midland Supervisors*, 49 M. 454.

275. Such issues of fact as are introduced by or under the return are disposed of specifically, not by sending down the entire case on the record, but in the same way as are particular issues sent down in chancery cases to be passed on: *Ibid*.

276. Whether the statute concerning the submission of special questions to the jury applies to cases where the issue of fact is made up in the supreme court, and specific questions are sent down to the circuit to be determined by the jury, *quere*. The circuit judge cannot restrict the scope of the inquiry ordered, and it is not certain that he can enlarge it: *Miner v. Vedder*, 66 M. 101 (May 5, '87).

277. H. S. § 8666, in providing that a peremptory *mandamus* shall be granted at once where a verdict is found for relator, does not apply if material issues have not been submitted to the jury and found in his favor: *Loomis v. Rogers Township Board*, 53 M. 136.

(f) *Hearing; what matters considered or reviewed.*

278. Where cause has been shown in opposition to an application for a *mandamus*, and an argument is not had until a subsequent term, the case must be noticed and placed upon the docket for argument as a calendar case, and printed briefs furnished: *People v. Fillmore Township Board*, 11 M. 197; *People v. Salem Township Board*, 19 M. 11.

279. Where a party had been ordered to show cause in a proceeding to compel the issue of patents to certain lands, but there was no proof of the service of the order and no reason given why it was not served, the court, in order not to prejudice any of his rights before he had an opportunity to be heard, permitted the case to be retained for further proceedings as to parties not yet notified so that they might be brought in, if the relator desired: *People v. State Land Commissioner*, 23 M. 270.

280. In *mandamus* cases the party interested is permitted to be heard in resisting the application: *Beecher v. Anderson*, 45 M. 548.

281. On the hearing of an application for a *mandamus*, the party showing cause is entitled to open and close the argument: *People v. Wayne County Treasurer*, 8 M. 392.

282. Where, in *mandamus* causes, the relator formally demurs to the respondent's answer, the former has the affirmative and is entitled to open and close the argument on the hearing: *People v. Wands*, 23 M. 385.

283. Whether a *mandamus* is the proper remedy in a case is not determined by an

order to show cause why the writ should not issue. That point may be finally examined and determined at the hearing on the return of the writ, when both parties can be heard: *Olson v. Muskegon Circuit Judge*, 49 M. 85.

284. Upon an application for *mandamus* to require a circuit judge to grant a motion made upon a showing of facts before him and which upon the showing he denied, the case must be heard on the facts disclosed on the hearing of the motion in the circuit, and not on new facts brought into the case on this application: *McCarthy v. Monroe Circuit Judge*, 36 M. 274.

285. In *mandamus* proceedings to enforce the payment of money, as in any other, the claimant must make out his own case unless it is admitted expressly or by implication; the burden is not on the respondent to show that the demand is illegal: *Hosier v. Higgins Township Board*, 45 M. 340.

286. A fact which has arisen since the return was made — e. g., the appointment of a successor to the respondent officer, whose return stated that he had resigned — cannot avail as matter of defence unless set up by a plea *puis darrein continuance* or its equivalent: *Thompson v. United States*, 103 U. S. 480.

287. On an application for *mandamus* to compel the raising of a tax to pay warrants purporting to be issued by a board of supervisors, the question of the validity of the proceedings to organize the county was not determined where it was not essential to the decision of the case: *Pack v. Presque Isle Supervisors*, 36 M. 378.

288. Defects in an affidavit for an attachment will not be reviewed by the supreme court in a *mandamus* proceeding to require the allowance of a motion to set aside a service thereof on person and property: *Nederland v. Wayne Circuit Judge*, 55 M. 411.

289. Upon an application for a *mandamus* to compel a township board to approve the sureties in a liquor bond, it is not the province of this court to decide as matter of fact whether the sureties offered were pecuniarily responsible, but merely whether the board acted in good faith and not arbitrarily or unjustly: *Post v. Sparta*, 64 M. 597.

And see INTOXICATING LIQUORS, V.

290. Matters stated in the application for a *mandamus* which are neither admitted nor denied by the answer cannot be insisted on by the relator on the argument if he goes to a hearing without proofs: *People v. State Land Office Commissioner*, 19 M. 470.

(g) *Nature and extent of relief.*

291. The supreme court may grant relief where a case is made out in part, even if it fails in other respects: *Hosier v. Higgins Township Board*, 45 M. 840.

292. *Mandamus* to compel the payment of money may be granted so far as concerns a portion of the demand, while as to the rest the application is dismissed: *Bryant v. Moore*, 50 M. 225.

293. Judicial discretion is always involved in *mandamus* cases, concerning the relief as well as other questions: *Ayres v. State Board of Auditors*, 42 M. 422.

294. The writ will not be granted where the application is for something different from that for which the party has laid the foundation. The refusal of the circuit court to grant a motion for an assessment of damages in replevin is not a proper foundation for an application to the supreme court for a *mandamus* commanding the circuit court to impanel a jury to assess the value of the property replevied: *People v. Jackson Circuit Judges*, 1 D. 302.

295. The relator in *mandamus* is not usually granted greater relief than is claimed in his application for the writ: *Reeder v. Wexford County Treasurer*, 37 M. 351.

296. Relief cannot be given as against the interests of any person not made a party to the proceeding and duly notified: *Austin v. Register of Deeds*, 41 M. 723.

297. Terms cannot be imposed on the relator when the writ is awarded, if he asks no more than his legal right: *People v. Bacon*, 18 M. 247.

298. Upon an application for a *mandamus* to compel the circuit court to set aside defective attachment proceedings, the supreme court cannot grant leave to amend the sheriff's return of sale: *People v. Calhoun Circuit Judges*, 1 D. 417.

299. As obedience to a *mandamus* is to be enforced by process for contempt the writ should point out the precise thing to be done: *Diamond Match Co. v. Powers*, 51 M. 145.

(h) *Effect of award or denial.*

300. The award of *mandamus* proves nothing and cannot be pleaded in bar; and its denial will not sustain error: *Burland v. Mutual Benefit Assoc.*, 47 M. 424.

301. *Mandamus* proceedings to compel the restoration of an alderman to a seat from which he has been wrongfully removed by the council do not concern the legality of his title: *Doran v. De Long*, 48 M. 552.

302. It seems that the discretionary act of denying a writ of *mandamus* to compel a sheriff to execute a criminal warrant does not necessarily determine the invalidity of the warrant: *Wheaton v. Beecher*, 49 M. 848.

303. A discretionary refusal on conflicting affidavits to grant a motion for a *mandamus* to review the action of a circuit judge is not such a determination of the facts as precludes a trial on testimony in the circuit: *Keppel v. Moore*, 66 M. 292 (June 16, '87).

304. Where the validity and good faith of a chattel mortgage have been decided in *mandamus* proceedings, such decision is *res judicata*: *Weed v. Mirick*, 62 M. 414.

MARRIAGE.

As to bigamy, see CRIMES, III, (g), 2.

1. While marriage is a contract it is also a relation governed by rules of public policy which apply to no mere private agreements: *Leavitt v. Leavitt*, 18 M. 452.

2. Marriage, between parties capable of contracting it, is of common right and valid by the common law of Christendom. As a general rule, if valid where celebrated it is valid everywhere, and if void where celebrated it is void everywhere. Regulations restricting it or imposing conditions upon it are exceptional, depend upon statutes, and must be proved by one who claims a case falls within them: *Hutchins v. Kimmell*, 31 M. 126.

3. *Prima facie*, a good marriage is shown by proof of a present agreement followed by cohabitation; it will not be presumed, in the absence of proof, that there are regulations anywhere restrictive of this common right: *Ibid.*

4. Where parties agree presently to take each other for husband and wife, with or without a ceremony, whatever its form, and from that time live together, professedly in that relation, this constitutes a valid marriage under our law: *Ibid.*; *Peet v. Peet*, 52 M. 464; *Meister v. Moore*, 96 U. S. 76.

5. A man and woman lived together as if they were husband and wife for twenty years and had thirteen children. Then they separated, and, during the man's life, the woman was formally married to another man, who lived with her nearly three years and then married another woman while the first was still living. Held, that the first couple were husband and wife, and the following marriage therefore void, so that the last marriage was valid and the woman entitled to claim a

widow's share of her husband's estate upon his death: *Peet v. Peet*, 52 M. 464.

6. A formal ceremony of marriage, whether in due form or not, must be presumed to be by consent, and therefore, *prima facie*, a contract of marriage *per verba de presenti*: *Hutchins v. Kimmell*, 31 M. 126.

7. But positive evidence of non-assent to a marriage ceremony that had been irregularly performed weighs against the presumption of its validity: *Kopke v. People*, 43 M. 41.

8. Evidence that persons appeared at a church, where the officiating minister publicly and in the presence of others performed a ceremony of marriage between them, and that they seemed to regard themselves as married, raises a presumption, in the absence of evidence to the contrary, that the ceremony was regular and legal, though there be no proof of the particulars of the ceremony or of the specific requisites of a lawful marriage ceremony under the forms and usages or customs of such church: *People v. Calder*, 80 M. 85.

9. A marriage ceremony performed in one county by a justice of the peace of another, being followed by cohabitation, is sufficient to constitute the parties husband and wife: *People v. Girdler*, 65 M. 68 (Feb. 10, '87).

10. The following was *held* not to be a marriage contract or a valid contract of any kind: "An article of agreement made and entered into by and between Mrs. Mary McCarthy of Chicago, Illinois, and Dennis Clancy, of Detroit, Michigan. We mutually and jointly, from now henceforth and forever, agree to live as man and wife, but each party retains the right to levy, sell and transfer their respective properties without question of the other party. Mrs. Mary McCarthy, Dennis Clancy. Witness: Hugh Murray, Emma Murray." And though followed by cohabitation, it was *held* there was no evidence of marriage: *Clancy v. Clancy*, 66 M. 202 (June 9, '87).

11. On a criminal trial a woman, upon her *voir dire*, testified that she was married to one P. in 1859; that the last time she saw him was in April, 1860; that she had not heard from him since; that in 1862 she read an account in a newspaper of the death of a man by the name of P., whom she supposed to be her husband; that when she married defendant she told him her husband was dead, and had been dead several years, and that she had lived with defendant as his wife about three years up to the time of his arrest. *Held*, that the evidence made a strong *prima facie* case of a marriage in good faith: *Dixon v. People*, 18 M. 84.

12. In the absence of opposing testimony

or of suspicious circumstances, marriage was regarded as proved by the depositions of his widow and neighbors, there being no question of identity or of his death: *Shotwell v. Harrison*, 22 M. 410.

13. A woman's deposition that she is the widow of a man who is deceased, and wherein she says he was her husband, is testimony that they were married: *Ibid*.

That date of marriage may be testified to on basis of family tradition, see EVIDENCE, § 202.

14. Reputation is important as evidence to establish the fact of a marriage, but it cannot disprove an actual marriage. And where there is doubt, the presumption should favor a lawful marriage rather than notorious immorality: *Peet v. Peet*, 52 M. 464.

15. In proving marriage reputation is important only as circumstantial evidence as to whether the parties themselves regarded each other as man and wife. An intimacy between a man and his housekeeper is not of itself evidence that they are married. And so long as their relations are such that the fact of marriage continues to be seriously questioned, it cannot be considered as established by reputation: *Cross v. Cross*, 55 M. 280.

16. Marriage is provable by conduct and reputation in all civil cases involving property rights, but not in criminal cases or in actions for criminal conversation: *Proctor v. Bigelow*, 38 M. 282; *Perry v. Lovejoy*, 49 M. 529.

17. But in an action by a husband for enticing away his wife, evidence of cohabitation and repute and of defendant's admissions of the fact are enough to establish the marriage relation: *Perry v. Lovejoy*, 49 M. 529.

18. In an action by a married woman for slander her marriage may be proved by repute. The highest evidence of marriage is not required where that fact is not a part of the main issue: *Leonard v. Pope*, 27 M. 145.

19. Certificates that are sufficient to prove the performance of a ceremony of marriage in a foreign country *prima facie* establish the marriage, and it is not error to admit such certificates in evidence without proof of the foreign law: *Hutchins v. Kimmell*, 31 M. 126.

20. A certificate of marriage performed in another state, merely signed by the minister, is not evidence in a criminal case where the defendant is entitled to confront the witnesses: *People v. Lambert*, 5 M. 349.

21. In a prosecution for adultery with a married woman the recorded marriage certificate is admissible to aid in proving the marriage though it may be insufficient without some identification of the parties. But where the husband's testimony and the certificate

together identify them, and the defendant admits the fact, an objection to the admission of the certificate becomes unimportant: *People v. Broughton*, 49 M. 339.

22. Where one has been appointed administratrix as decedent's widow, the legality of her marriage cannot be questioned in an action by her as such administratrix: *James v. Emmet Mining Co.*, 55 M. 336.

23. A woman who by mutual agreement with the man with whom she was living had parted from and released all claims upon him and left the state and married another man cannot maintain a claim for widow's allowances against the estate of her original companion, as against a woman who in good faith lawfully married him, without, at least, showing very clearly that she, the claimant, had been his lawful wife: *Young's Appeal*, 52 M. 592.

24. Chastity is not a requisite to the validity of a marriage, nor does mere incontinence avoid a subsequent marriage: *Leavitt v. Leavitt*, 13 M. 452.

25. Whether pregnancy by another than the prospective husband and unknown to him would do so, *quere*: *Sissung v. Sissung*, 65 M. 168 (Feb. 15, '87).

26. Fraud to invalidate a marriage must be such as negatives consent, without reference to previous inducement, and must be nearly, if not quite, coincident in time with the marriage: *Leavitt v. Leavitt*, 13 M. 452.

As to annulling marriage for fraud, etc., see DIVORCE, §§ 102-105, 137, 188; EQUITY, § 1148.

27. H. S. § 6209, declaring males of eighteen and females of sixteen legally capable of "contracting marriage," refers to the actual forming of the marriage relation; and while it makes such marriages valid, it does not empower infants to make executory contracts of marriage that will sustain action for breach of promise: *Frost v. Vought*, 37 M. 65.

Further as to BREACH OF PROMISE, see that title.

28. Though a marriage where one of the parties is under the age of consent, as fixed by statute, is voidable only, yet such a marriage is not one authorized by law; and one who knowingly solemnizes such a marriage is guilty under H. S. § 6219: *Bonker v. People*, 37 M. 4.

And see CRIMES, §§ 585, 586.

29. Where parties are married one of whom is under and the other over the age of consent, the latter, by the statutes of this state, is bound by the marriage, unless they separate by consent before the other reaches

lawful age, and do not cohabit afterwards, or unless the other refuses to consent on arriving at that age: *People v. Slack*, 15 M. 193.

30. As a girl thirteen years old cannot lawfully be married, the omission, in a prosecution for seduction, to ask whether the victim was unmarried was unimportant: *Lewis v. People*, 37 M. 518.

31. The validity of polygamous marriages among Indians, and the right of the offspring of such marriages to inherit, considered: *Compo v. Jackson Iron Co.*, 50 M. 578.

MASTER AND SERVANT.

I. THE RELATION.

(a) *When exists.*

(b) *Hiring; compensation; duties.*

(c) *Discharge of servant.*

II. LIABILITY OF MASTER FOR SERVANT'S ACTS.

See, also, AGENCY.

As to employer's liability for negligence injuring employee, see NEGLIGENCE; RAILROADS, VI.

I. THE RELATION.

(a) *When exists.*

1. Although in all ordinary transactions the relation of contractor excludes that of master and servant, yet there is no such repugnance between them that they cannot co-exist: *Detroit v. Corey*, 9 M. 165.

2. The relation of master and servant may exist between a corporation and an individual: *McWilliams v. Detroit Central Mills Co.*, 31 M. 274.

3. Where men are employed in the ordinary way as laborers in cutting trees for another person under an intermediate agent who is an overseer and not a contractor, they as well as such agent are the servants of such other person: *Smith v. Webster*, 23 M. 298.

4. A. made a bargain with B. to cut all the logs A. had on certain land, and to deliver them to A. at a place named; A. having no interest in the running of the logs until they reached the point of delivery, nor obliged to render any assistance, pecuniary or otherwise, in the cutting or running of the logs. It was held that the relation of master and servant did not exist, and that B. alone was liable for any injury occasioned to others by his conduct in performing his contract: *Moore v. Sandborn*, 2 M. 519.

(b) *Hiring; compensation; duties.*

As to liquidated damages to master for breach of contract of service, see DAMAGES, §§ 467-470.

5. Where the plaintiff's testimony showed that he supposed that he was hired for a definite period, and the negotiations showed that the plaintiff was seeking a permanent situation, that both parties understood that it might continue for a year, and that the compensation was fixed at a definite sum *per annum*, it was not error for the court to refuse to charge that there was no evidence of a hiring for a definite period, and that the verdict must be for the defendant: *Franklin Mining Co. v. Harris*, 24 M. 115.

6. An agreement to pay a servant what the employer thinks he is worth binds the latter to pay what the services are reasonably worth, and does not leave him to fix his wages at such sum as he sees fit after the services are performed, although such an agreement would be valid if understood: *Millar v. Cuddy*, 48 M. 278.

7. Where a master notifies his servant that he will hereafter pay him less, and the servant continues work without notifying his master that he will claim more, it constitutes a new arrangement: *Spicer v. Earl*, 41 M. 191.

8. Retention in service is proof of the servant's right to wages until something is shown to the contrary, and the burden is not on him to prove that he has done everything incumbent on him, but is on the master to prove otherwise: *Bolt v. Friederick*, 56 M. 20.

9. In an action on a contract of hire the question was whether the period of employment was by the year or by the month. The contract itself stated that the one party agreed to pay the other a specified sum "per year, payable in monthly payments." Payments were in fact made monthly, but in the course of the third year of employment the employee was discharged. Toward the close of the second year he had asked his employer if he was satisfied and the latter had said that he was. *Held*, that these facts were for the jury, who were to determine what the understanding of the parties was as to the period of hire: *Tallon v. Grand Portage Copper Mining Co.*, 55 M. 147.

10. Where, under a contract for a year's service, the employee has gone on from year to year, and at the end of a year is allowed to go on without objection, a presumption arises which will warrant a jury in finding that the parties to the contract have assented to its continuing in force for another year: *Sines*

v. Wayne Poor Superintendents, 58 M. 508, 55 M. 888.

11. A travelling salesman whose contract of employment secures him his travelling expenses is entitled to reimbursement for the expenses of necessary trips to headquarters and of hotel bills while there: *Lamb v. Henderson*, 68 M. 302.

12. Under an ordinary hiring by the day, the party cannot be required to prolong his service in order to complete any particular piece of work upon which he may happen to be employed: *Wyngert v. Norton*, 4 M. 286.

13. One employed by the year on a salary is bound to devote his time diligently and faithfully to the business interests of his employers, and to do nothing which will hinder or compete with those interests; but this will not prevent his rendering civilities or services to others which do not conflict with his duties to his employers, or prejudice their interests: *Geiger v. Hurris*, 19 M. 209.

14. Therefore a travelling agent commits no violation of duty by taking, gratuitously, orders for goods upon a house in whose service he has formerly been engaged; he not having solicited them, and it not appearing that such orders were in any way prejudicial to the interests of his employers: *Ibid*.

15. Deductions for an employee's use of time that does not belong to his employer cannot be made from his compensation: *Ibid*; *People v. Miller*, 24 M. 458, 464.

16. The actual value of services may be shown in an action on a contract of employment where there is a direct conflict of evidence as to the agreed rate of payment: *Richardson v. McGoldrick*, 48 M. 476.

17. Where a company contracts to pay an employee "the same wages as shall be paid to other men in the employ of the company filling similar positions," and the laborer sues for compensation, and there is no showing that the company had other employees in similar positions, the plaintiff is entitled to prove what his services were worth: *Kent Furniture Manuf. Co. v. Ransom*, 46 M. 416.

18. Where a salesman receives a fixed sum for travelling expenses, and a salary dependent upon the amount of his sales, it is admissible, when he sues upon his contract of employment, to show his lack of diligence in reduction or bar of damages: *Alberts v. Stearns*, 50 M. 349.

19. When one engages in another's employment he undertakes to obey all lawful orders, and subjects himself for failure to do so to liability to discharge and damages: *Chicago & N. W. R. Co. v. Bayfield*, 87 M. 205.

20. The orders of a master are so far presumptively lawful that the servant has the burden of showing a lawful reason for disobeying them: *Ibid*.

21. In general, one who engages to render skilled services undertakes for reasonable skill and for good faith, and is liable for negligence or dishonest service, but not for errors of judgment; the risk of those is on the employer: *Page v. Wells*, 37 M. 415.

22. An arrangement by which one is to receive compensation for minutes to be obtained by him of valuable lands of a certain quality is an employment, and not a sale of information, and implies no warranty of the absolute truth of the descriptions, and the employee is not liable for mistakes: *Ibid*.

23. Though if, in furnishing descriptions of land, he misleads or injures his employer by a positive affirmation of their quality, when he knows nothing about it, he would be liable for bad faith or negligence: *Ibid*.

(c) *Discharge of servant.*

24. An employer has no arbitrary power to dismiss his employee for a disobedience to orders that involve no serious consequences and is not "wilful" in the sense of being perverse, insubordinate or unreasonable; and its reasonableness is for the jury. Nor can disobedience be made a pretext for dismissal apart from the injury it causes. Whether even a menial or domestic servant can be dismissed for mere harmless disobedience, *quere*: *Shaver v. Ingham*, 58 M. 649.

25. Employers cannot assume to be final judges in their own behalf of the propriety of dismissing their employees during their term of employment, unless they also take the responsibility which attaches to dismissals without actual cause: *Jones v. Graham, etc. Transp. Co.*, 51 M. 539.

26. The words "I am very sorry to have to ask you to resign your position," in a letter from an employer to his employee, are properly construed as a peremptory discharge: *Ibid*.

27. A vessel captain who has been peremptorily discharged by the owner of the vessel for unfitness is not bound to offer to resume command before leaving and beginning suit against the owner on the contract of employment between them. He owes defendant no further duty than to use reasonable diligence to obtain other employment: *Ibid*.

28. Proof of the actual fitness of an employee who has been discharged is proper in

an action by him on the contract of employment: *Ibid*.

29. Plaintiff, claiming to have been wrongfully dismissed from service before an alleged yearly term was up, sued for wages due for the period after the dismissal. It appearing that pay had always been balanced monthly, it was error to exclude a question to plaintiff whether he had ever asked for any pay for such period after dismissal: *Collins v. Hazelton*, 65 M. 220 (Feb. 15, '87).

30. A plaintiff who was personally employed by defendant is bound, in an action for wages claimed to be due for the period after an alleged wrongful dismissal, to show actual authority from defendant to the person assuming to discharge him, or actual knowledge and approval of his discharge; and he was bound to see that defendant had knowledge that he refused to acquiesce in his discharge, and that he proposed to hold himself ready at all times to resume his labor: *Ibid*.

II. LIABILITY OF MASTER FOR SERVANT'S ACTS.

31. To render an employer liable for his employee's fault or negligence, the injury complained of must arise in the course of the execution of some service lawful in itself but negligently or unskillfully performed: *Moore v. Sanborn*, 2 M. 519.

32. For the wanton violation of law by a servant, although when occupied about the business of his employer, the servant alone is liable: *Ibid*.

33. A master is responsible for the trespasses of his servants, done under the directions of an overseer, or in the regular course of their employment, and not by wilful wrong. He must keep them within their proper bounds. For wilful misconduct he is sometimes liable and sometimes not: *Smith v. Webster*, 23 M. 298.

34. A master is not responsible for a positive wrong intentionally or recklessly done by his servant, beyond the scope of his business: *Chicago & N. W. R. Co. v. Bayfield*, 37 M. 205.

35. But when the wrong merely arises from an excess of authority committed in furthering the master's interests, and the master receives the benefit of the act, the master's liability does not depend upon any question of the exact limits of the servant's authority: *Ibid*.

36. One who innocently and for a lawful purpose employs another is responsible only for what is fairly within the authority that he gives him, and not for his trespasses; nor is he

liable for the latter's aggravated and wanton wrong-doing in such damages as would be proper if he did it himself or sanctioned it: *Sutherland v. Ingalls*, 63 M. 620.

37. In trespass against an employer for an injury caused by the act of his servant, it is for the jury to decide whether the act was wilful or careless; if wilful, the employer would not be answerable: *Wood v. Detroit City Street R. Co.*, 52 M. 402.

38. The proprietor of a newspaper is liable for reckless libels by his employees: *Scripps v. Reilly*, 38 M. 10.

39. For those aggravations that arise out of his servant's wantonness and malice the employer is not on the same footing with his servant: *Great Western R. Co. v. Miller*, 19 M. 805.

As to liability of liquor-dealer for act of employee, see **CRIMES**, §§ 27, 29; **INTOXICATING LIQUORS**, §§ 36, 37, 62.

As to master's liability for servant's negligence, see **NEGLIGENCE**, II.

MAXIMS.

As to the maxims of courts of equity, see **EQUITY**, I.

1. **Actio personalis moritur cum persona**: *Hyatt v. Adams*, 16 M. 180, 189; *James v. Emmet Mining Co.*, 55 M. 385.

2. **Actus non facit reum nisi mens sit rea**: *Pond v. People*, 8 M. 150, 174; *Maher v. People*, 10 M. 212, 217.

3. **Caveat emptor**: *Picard v. McCormick*, 11 M. 68, 73; *Crane v. Reeder*, 25 M. 303, 321; *Bristol v. Braidwood*, 28 M. 191, 194; *Tenney v. Hand*, 32 M. 63, 64; *McGoren v. Avery*, 37 M. 120; *Tuttle v. White*, 46 M. 485.

4. **Communis error facit jus**: *Malonny v. Mahar*, 1 M. 26, 30; *Pease v. Peck*, 18 How. (U. S.) 595, 597.

5. **Conventus privatorum non potest publico jure derogare**: *Jaquith v. Hudson*, 5 M. 123, 124; *Mandlebaum v. McDonell*, 29 M. 78, 91.

6. **Delegata potestas non potest delegari**: *People v. Collins*, 3 M. 343, 351. See **CONSTITUTIONS**, §§ 495-497; **COUNTIES**, §§ 58, 59.

7. **De minimis non curat lex**: *Case v. Dean*, 16 M. 12, 33.

8. **De non apparentibus et non existentibus eadem est ratio et judicium**: *People v. Wells*, 8 M. 104, 107; *Van Auken v. Monroe*, 38 M. 725, 727.

9. **Divinatio, non interpretatio est, quæ omnino recedit a litera**: *Jaquith v. Hudson*, 5 M. 123, 136.

10. **Ex nudo pacto non oritur actio**: *Colman v. Post*, 10 M. 422, 423.

11. **Expressio unius est exclusio alterius**: *Williams v. Detroit*, 2 M. 560, 563; *Galpin v. Abbott*, 6 M. 17, 48; *Niles v. Rhodes*, 7 M. 374, 386; *Perry v. Cheboygan*, 55 M. 250, 254.

12. **Expressum facit cessare tacitum**: *Williams v. Detroit*, 2 M. 560, 563; *M. C. R. Co. v. Hale*, 6 M. 243, 262.

13. **Ex turpi causa non oritur actio**: *Quirk v. Thomas*, 6 M. 76, 109.

14. **Ex turpi contractu not oritur actio**: *Bank of Michigan v. Niles*, 1 D. 401, 413; *Brooks v. Hill*, 1 M. 118, 127; *Comstock v. Draper*, 1 M. 481, 483; *State v. How*, 1 M. 512, 515.

15. **Falsa demonstratio non nocet**: *Anderson v. Baughman*, 7 M. 69, 75; *Johnstone v. Scott*, 11 M. 232, 240; *Cooper v. Bigly*, 18 M. 463, 477.

16. **Fortior et potentior est dispositio legis quam hominis**: *Mandlebaum v. McDonell*, 29 M. 78, 91.

17. **He who sows shall reap**: *McDaniels v. Walker*, 44 M. 83, 85.

18. **Id certum est quod certum reddi potest**: *Paddack v. Pardee*, 1 M. 421, 426; *Clement v. Comstock*, 2 M. 359, 363; *Martin v. McReynolds*, 6 M. 70, 75; *Cooper v. Bigly*, 13 M. 463, 479.

19. **Id certum est quod potest certum fieri**: *Lockwood v. Drake*, 1 M. 14, 16.

Ignorantia legis neminem excusat: See **CRIMES**, §§ 32, 33; **EVIDENCE**, §§ 1527-1538.

20. **In fictione juris semper æquitas existit. A legal fiction is always consistent with equity**: *Blackwood v. Brown*, 29 M. 483, 484; *Heffron v. Flanagan*, 37 M. 274, 277; *Flint & P. M. R. Co. v. Gordon*, 41 M. 420, 431.

21. **In pari delicto melior est conditio possidentis**: *Bank of Michigan v. Niles*, 1 D. 401, 411.

22. **In pari delicto potior est conditio defendentis et possidentis**: *Thurston v. Prentiss*, 1 M. 193, 199.

23. **In traditionibus chartarum, non quod dictum, sed quod factum est, inspicitur**: *Dawson v. Hall*, 2 M. 390, 392.

24. **Lex neminem cogit ad impossibilia**: *Grand Lodge A. O. U. W. v. Child*, 70 M. 163 (May 11, '88).

25. **Modus et conventio vincunt legem**: *Mandlebaum v. McDonell*, 29 M. 78, 91.

26. **Nemo allegans suam turpitudinem, est audiendus**: *Orr v. Lacey*, 2 D. 230, 247.

27. **Nemo debet bis vexari eadem causa**: *Sheahan v. Barry*, 27 M. 217, 221;

Elliott v. Van Buren, 33 M. 49, 56; *Dutton v. Shaw*, 35 M. 431, 433.

28. *Nemo debet esse iudex in propria causa*: *Parsons v. Russell*, 11 M. 113, 121; *People v. Overysel Township Board*, 11 M. 222, 226; *Peninsular R. Co. v. Howard*, 20 M. 18, 25; *Stockwell v. White Lake*, 22 M. 341, 344; *Sheldon v. Kalamazoo*, 24 M. 333; *Kennedy v. Gies*, 25 M. 83; *Whipple v. Saginaw Circuit Judge*, 26 M. 342, 345; *Clement v. Everest*, 29 M. 19; *King v. Merritt*, 67 M. 194 (Oct. 13, '87).

29. *Nemo est hæres viventis*: *Lewis v. Nelson*, 4 M. 630, 639; *Ready v. Kearsley*, 14 M. 215, 225; *Lloyd v. Wayne Circuit Judge*, 56 M. 236.

30. *No man can profit by his own wrong*: *Kiplinger v. Green*, 61 M. 340, 347.

31. *Omnia præsumuntur contra spoliatorem*: *Bethel v. Linn*, 63 M. 464; *Hance v. Tittabawassee Boom Co.*, 70 M. 227 (May 11, '88).

Omnia rite esse acta præsumuntur: See EVIDENCE, §§ 1565-1584.

32. *Omnis definitio in jure periculosa est*: *Hall v. Ionia*, 38 M. 493, 498.

33. *Quando res non valet ut ago, valet quantum valere potest*: *Thayer v. McGee*, 20 M. 195, 207.

34. *Qui facit per alium, facit per se*: *Green v. Graves*, 1 D. 351, 357; *Ætna L. S. F. & T. Ins. Co. v. Olmstead*, 21 M. 246, 253. See, also, AGENCY.

35. *Qui hæret in litera, hæret in cortice*: *Smith v. Barstow*, 2 D. 155, 166.

36. *Quilibet potest renunciare juri pro se introducto*: *People v. Johr*, 22 M. 461, 466.

37. *Qui per alium facit, seipsum facere videtur*: *Shaw v. Bradley*, 59 M. 199, 204.

38. *Quod initio non valet tractu temporis non convalescit*: *Gorham v. Wing*, 10 M. 486, 496.

39. *Respondeat superior*: *De Forrest v. Wright*, 2 M. 368, 369; *Moore v. Sanborn*, 2 M. 519, 528; *Detroit v. Corey*, 9 M. 165, 184; *Bath v. Caton*, 37 M. 199, 202; *Boyd v. Rice*, 38 M. 599, 600. See, also, NEGLIGENCE, II.

40. *Salus populi suprema lex*: *People v. Phippin*, 70 M. 6 (April 27, '88).

41. *Sic utere tuo ut alienum non lædas*: *James v. Brown*, 11 M. 25, 30; *Caldwell v. Gale*, 11 M. 77, 84; *Gilbert v. Showerman*, 23 M. 448, 454; *Bay City Gas-Light Co. v. Industrial Works*, 28 M. 182, 184; *Robinson v. Baugh*, 31 M. 290, 295; *Underwood v. Waldron*, 33 M. 232; *Grand Rapids & I. R. Co. v. Heisel*, 38 M. 62, 70; *People's Ice Co. v. The Excelsior*, 44 M. 229, 236; *Patterson v. Wa-*

bash, St. L. & P. R. Co., 54 M. 91; *Boyd v. Conklin*, 54 M. 583; *Detroit Base Ball Club v. Deppert*, 61 M. 63, 68; *Burke v. Smith*, 69 M. 380 (April 20, '88).

42. *Stare decisis et non quieta movere*: *Morgan v. Butterfield*, 3 M. 615, 625; *Newberry v. Trowbridge*, 4 M. 391, 395.

43. *Ubi jus, ibi remedium*: *Stout v. Keyes*, 2 D. 184, 187; *Pontiac v. Carter*, 32 M. 164, 169; *De May v. Roberts*, 46 M. 160, 166.

44. *Ut res magis valeat quam pereat*: *People v. Lambert*, 5 M. 349, 364; *Anderson v. Baughman*, 7 M. 69, 77; *Thayer v. McGee*, 20 M. 195, 207.

45. *Vigilantibus et non dormientibus leges subveniunt*: *Hollister v. Loud*, 2 M. 309, 314; *Campau v. Van Dyke*, 15 M. 871, 878.

MECHANICS' LIENS.

See LIENS, II.

MILLERS AND MILL-OWNERS.

As to building mill-races, see HIGHWAYS, §§ 86-89.

As to dams and water-power, see WATERS, V.

1. The statute relating the duties of millers and mill-owners (H. S. §§ 1618-1621) is meant to apply to such mills only as are in the habit of grinding for toll: *Merrill v. Cahill*, 8 M. 55.

2. Under this statute, millers who hold themselves out to the community as millers grinding for the public generally are bound to a similar impartiality to that required of common carriers, innkeepers, and those following such public avocations. And it is as clearly their duty to receive grain when the mill is running as to grind it when received: *Ibid*.

3. Where two or more persons own and run such a mill, they are all liable for a refusal to receive grain brought to be ground, whether the refusal comes from one or all such owners, or from the agent in charge: *Ibid*.

Evidence in suit for refusal to receive grain, see EVIDENCE, § 392.

MINING.

I. IN GENERAL.

II. MINING LEASES; ROYALTIES.

III. MINING COMPANIES.

IV. LIABILITY FOR INJURIES.

I. IN GENERAL.

1. A mere reservation, in a conveyance of minerals, or such a reservation with the right of mining, must always respect surface rights of support, and will not, standing alone, permit the surface to be destroyed without some additional statutory or contract authority; and such authority will be carefully construed to prevent the destruction of surface rights: *Erickson v. Michigan Land & Iron Co.*, 50 M. 604.

2. Easements to do such acts as are reasonably necessary to get out the mineral and remove it from the mine may be granted or reserved so as to attach to the mining estate: *Ibid.*

3. And the right to use shafts or other mining erections, made and used solely for mining purposes, is in the nature of an easement appurtenant to the mine, so that ejectment for parts of the surface necessarily occupied by them cannot be brought by the grantees in a deed reserving mining rights: *Ibid.*

4. A tenant in common of a mine in charge thereof for the common benefit, and who holds a lease of adjoining mining lands, is under no obligation to give his whole time to the mine owned in common: *Pierce v. Pierce*, 55 M. 629.

5. The mere fact of contiguity to mining lands owned by the parties in common does not make out against one party an obligation to participate in the risks, or against the other an impediment to taking the venture into his own hands: *Ibid.*

6. An agreement to sell the location of a mining company construed, and the rights of the parties thereunder determined: *Titus v. Minnesota Mining Co.*, 8 M. 183.

7. Breaking through the partition wall of an adjoining mine is not necessarily a trespass if not incident to an encroachment upon the latter's premises; and even if there were such encroachment the flow of water through the opening, after the right of action for the original trespass has been barred by lapse of time, cannot be connected with such trespass so as to defeat the operation of the statute of limitations. The mere continuance of the breach is no injury in itself, and as the right of action for the original trespass would have covered the cost of repairing the breach, the bar of the statute destroys that remedy. And a subsequent flooding will sustain no right of action if it only resulted from the exercise, by either mining company, of its right to discontinue operations, or to go on after the other has dis-

continued: *National Copper Co. v. Minnesota Mining Co.*, 57 M. 83.

8. Whether personal property in use about a mine is a fixture is a question of the intent with which it was annexed to the freehold: *Scudder v. Anderson*, 54 M. 122.

9. Expenses incurred by one partner of a mining firm in exploring premises leased to the firm for mining should be allowed upon a partnership accounting: *Sweeney v. Neeley*, 53 M. 421.

II. MINING LEASES; ROYALTIES.

10. A lease of mining land from the war department of the United States government purported to give permanent rights, including a right of pre-emption. An act of congress recognized the control of the war department by providing for its transfer to the treasury department, and it also gave to occupants holding under war department leases a right of pre-emption on certain conditions. *Held*, that this ratified such lease whether it was originally valid or not, and that one who held an agreement from the lessee entitling him to a specified share of the land when the lessee should obtain title had a claim which followed the lessee's purchase, and obtained thereby an equitable title which the legal owner held in trust for him, and which passed by descent and could be transferred by assignment: *Compo v. Jackson Iron Co.*, 49 M. 39. See same case, 50 M. 578.

11. Leases of coal mining lands for terms of twenty-five years, with the privilege of renewal, were given in 1857 and 1858, but the lessees did not go upon the lands and ceased to pay rent in 1871, apparently thinking that the mines were not worth working. The owners regarding the leases as abandoned, no payment having been tendered for several years, did not bring suit for the rent, but let the lands again to other persons at a higher rental. *Held*, on an injunction bill brought by the assignees of the original lease to establish their own title and restrain the later lessees from mining the lands, (1) that the owners had a right to regard the abandonment as final and to relet the premises; and (2) that the owners were necessary parties to a bill intended to destroy securities under which they were entitled to increased revenues, and should have been impleaded as defendants: *Porter v. Noyes*, 47 M. 55.

12. A lease of an equal undivided half of specified premises for all the purposes of mining, including the erection of necessary build-

ings, also provided that the lessor should not dispose of the interest leased without giving the lessee the refusal of it, and that until sold the lessor should retain, for agricultural purposes, the use of so much of the land as was not needed for mining. *Held*, that this did not give an ordinary leasehold interest, but a specific mining privilege; the lessee's right, until he took actual possession, was a mere incorporeal right, floating and indefinite, and not enforceable by an action of ejectment: *Harlow v. Lake Superior Iron Co.*, 36 M. 105.

13. And while under it the lessee could open as many mines as he pleased, wherever he liked, and could assign his interest, he could not subdivide it and assign to more than one person, partnership or corporation; and a similar undivided right remained in the lessor: *Ibid*.

14. A lessee of lands for years can work an open mine upon the premises unless restrained by the terms of his lease; but he cannot open a new mine unless the privilege of doing so is expressly granted: *Ibid*.

15. After sale of mining lands on execution, the debtor, during the fifteen months he is allowed to remain in possession, has no less rights than a tenant for years; he may not open new mines, but the old ones he may work in the customary and reasonable way, and may sell the ore produced: *Ward v. Carp River Iron Co.*, 47 M. 65, 50 M. 522.

16. Where a lease of land for mining iron ore upon a royalty expressly reserves to the lessors the use and possession of the land for every other purpose, and restricts the lessees' right to cut timber to such as may be wanted for mining purposes, the lessees are not liable for the stipulated royalty upon the ore, if, upon diligent search and exploration, no iron ore is found and none exists in or under the soil; but they are liable to pay the taxes upon the property as agreed in the lease: *Gribben v. Atkinson*, 64 M. 651.

17. Royalties under a mining lease cannot be recovered by the landlord from the lessee's assignees whom he has excluded from possession and from working the mine: *Pendill v. Eells*, 67 M. 657 (Jan. 5, '88).

18. A demand for payment of rent or royalty due, though necessary before re-entry, may be waived by the parties. Notice of re-entry or of the intention to re-enter is not necessary: *Pendill v. Union Mining Co.*, 64 M. 172.

III. MINING COMPANIES.

19. Under H. S. § 4004, the company's business office may be in one county and the min-

ing business be carried on in another: *Van Etten v. Eaton*, 19 M. 187.

20. A mining company has power to buy timber: *Adams Mining Co. v. Senter*, 26 M. 73.

21. But such a company cannot issue accommodation paper and deliver it to third persons: *Beecher v. Dacey*, 45 M. 92.

22. The fact that the president and treasurer of a mining company who are also its sole incorporators having substantial interests conducted their business as if they were partners does not enable one who did not deal with them as partners to recover for notes given and taken as corporate notes unless he shows a corporate liability: *New York Iron Mine v. Negaunee Bank*, 39 M. 644.

As to the powers of superintendents and general agents of mining companies, see CORPORATIONS, §§ 80-86, 140.

23. H. S. § 4052, providing that alienations or mortgages of lands, etc., of mining companies should have no force or effect unless authorized by a three-fifths vote of stock at a meeting called by notice as provided in H. S. § 4051, was enacted to protect the interests of stockholders, and would not enable others to raise questions of irregularity as to the notice: *Beecher v. Marquette & P. R. M. Co.*, 45 M. 103.

See CORPORATIONS, § 137.

24. H. S. § 4015, which was passed to confirm sales or leases by mining companies that had been made in good faith and for value though not according to the requirements of H. S. § 4052 (see *supra*, § 23), did not make such sales, etc., presumptive evidence of their rightful character; but it must still be shown that they were in good faith, etc.: *Marquette, H. & O. R. Co. v. Atkinson*, 44 M. 166.

As to stock in such companies, and as to transfers and forfeitures thereof and assessments thereon, see CORPORATIONS, §§ 34, 37, 88, 43, 44, 203, 205, 206.

As to liability of stockholders for labor debts, see CORPORATIONS, §§ 211, 212, 221, 223, 251, 255.

Penalty for failure to file report, see CORPORATIONS, §§ 109, 110.

As to custom excusing mining superintendent from paying rent, see CUSTOM AND USAGE, § 29.

IV. LIABILITY FOR INJURIES.

25. An injury from a mining blast to a person passing along a thoroughfare on the premises of the mining company is not excused by the fact that the road is not a public highway, if the company had opened it for the convenience of all persons who had oc-

casation to use it: *Beauchamp v. Saginaw Mining Co.*, 50 M. 163.

26. A mutual understanding between adjoining mining companies that each, in blasting, may throw rock upon the other's premises will be no defence to an action for injury to a person rightfully on such premises: *Ibid.*

27. It is negligence not to keep mining works reasonably well protected from a common danger, such as that of falling rocks: *Lake Superior Iron Co. v. Erickson*, 89 M. 492; *James v. Emmet Mining Co.*, 55 M. 335.

28. Timbering put up in a mine to stay the walls must be adapted to the incidents of mining, such as the falling of ore and rock, and the shock of explosions; and where experienced mining men differ in their testimony as to the adequacy or inadequacy of such timbering, it is for the jury to form their own conclusions: *James v. Emmet Mining Co.*, 55 M. 335.

29. A declaration for an injury caused by the caving-in of the surface over a mine will cover a case in which the caving-in was due in part to the insufficiency of lateral supports, and need not be confined to one in which the surface fell in because of the removal of that on which it rested: *Ibid.*

30. If the owner of a mine turns it over to contractors when he knows or should know that it is in an unsafe condition; he is liable for an injury to a miner who goes to work in ignorance of the danger: *Samuelson v. Cleveland Iron Mining Co.*, 49 M. 164.

31. But mere ownership of a mine does not impose the duty of keeping it in safe condition; the owner may transfer the responsibility to lessees or contractors, unless he retains control and gives others to understand that they may rely upon him to protect them from the negligence of the occupants: *Ibid.*

32. And where the owner of a mine in proper condition contracted with certain persons to work it, but the contract provided that the latter, not the owner, should be liable for injuries to workmen, a stipulation in the contract providing that when the contractors repaired the mine the work should be done under the supervision of a person designated by the owner, it was held that such stipulation did not require the owner to supervise, but merely gave him the right to do so, and that neglect of his own interests in this regard would not render him liable for injuries to miners: *Ibid.*

33. Where a mining company contracting for the removal of ore reserves to itself the power of guarding the mine from dangers, it is liable for such injuries as employees of the

contractors suffer, without their own fault, from want of protection; and its responsibility is not changed by the fact that the work is done by the ton instead of by the day: *Lake Superior Iron Co. v. Erickson*, 89 M. 492.

34. A common workman employed about a mine, but not himself a miner, is not a fellow-employee of the miners in any such sense that he cannot recover for an injury caused him by the mining operations: *James v. Emmet Mining Co.*, 55 M. 335.

35. It is for the jury to decide whether an employee is guilty of contributory negligence in passing from a pit mine by way of an inclined track upon which a "skip-car" is run and which track is generally used by the men, it being the most convenient though not the only way of reaching the mine: *Luke v. Wheat Mining Co.*, 71 M. — (July 11, '88).

As to evidence in action against mining company for injury to contractor's employee, see EVIDENCE, § 571.

MORTGAGES.

I. GENERAL PRINCIPLES.

- (a) *Nature of mortgage.*
- (b) *What constitutes; equitable mortgages.*
- (c) *Deeds absolute on their face; defeasance.*
 1. Generally.
 2. Construction; evidence.
 3. Defeasance.
- (d) *Renewal.*

II. VALIDITY; CONSTRUCTION.

- (a) *Capacity of parties.*
- (b) *Mistake; coercion; undue influence; fraud; forgery.*
- (c) *Formal requisites.*
- (d) *Delivery.*
- (e) *Consideration.*
- (f) *The debt secured.*
- (g) *Property or interests covered.*
 1. Generally.
 2. Description.
- (h) *Conditions and stipulations.*
 1. Generally.
 2. Stipulations for attorneys' fees.
 3. Agreements to pay higher interest.
- (i) *Power of sale.*

III. PRIORITY OF LIEN.

IV. RIGHTS, INTERESTS AND LIABILITIES OF MORTGAGEES.

V. RIGHTS, ETC., OF MORTGAGEES.

VI. RIGHTS, ETC., OF SUBSEQUENT PURCHASERS OR ENCUMBRANCERS; ASSUMPTION OF MORTGAGE; MARSHALLING SECURITIES.

- (a) *In general.*
- (b) *Assumption of mortgage.*
- (c) *Marshalling securities.*

VII. ASSIGNMENT.

- (a) *What constitutes; validity.*
- (b) *Effect; rights, etc., of assignees.*

VIII. SUBROGATION.

IX. PAYMENT AND SATISFACTION; DISCHARGE; RELEASE; MERGER.

- (a) *Payment and satisfaction.*
 - 1. Presumptions; what constitutes.
 - 2. To whom payment may be made.
 - 3. Application of payments.
- (b) *Discharge.*
 - 1. In general.
 - 2. Discharge by tender.
 - 3. Penalty for failure to discharge.
- (c) *Release.*
- (d) *Merger.*

X. FORECLOSURE IN EQUITY.

- (a) *When right of foreclosure exists.*
 - 1. In general.
 - 2. Lapse of time; limitations; laches.
 - 3. Effect of proceedings at law or of statutory foreclosure.
- (b) *Defences.*
- (c) *Parties.*
 - 1. Who may foreclose or be joined as complainants.
 - 2. Defendants.
- (d) *Pleadings.*
 - 1. The bill.
 - 2. The answer; cross-bill.
 - 3. What evidence warranted by the pleadings; variance.
- (e) *What matters can be litigated.*
- (f) *Publication; absent, etc., defendants.*
- (g) *Evidence; burden of proof; production of the securities; reference.*
- (h) *Receivers.*
- (i) *Decree.*
 - 1. Form; what may include.
 - 2. Personal decrees for deficiency.
 - 3. Validity and effect; conclusiveness.
- (j) *Sale.*
 - 1. When may be made; notice.
 - 2. Method and order of sale; marshalling securities.

X. FORECLOSURE IN EQUITY — continued.

- (j) *Sale — continued.*
 - 3. Who may purchase; rights of purchasers.
 - 4. Report and confirmation.
 - 5. Setting aside sale.
 - 6. Surplus moneys.
- (k) *Proceedings for further decree upon instalments.*
- (l) *Proceedings to collect deficiency.*

XI. FORECLOSURE BY ADVERTISEMENT.

- (a) *Generally; when appropriate or allowable; who can foreclose.*
- (b) *Notice of sale.*
- (c) *Sale.*
 - 1. In general.
 - 2. Surplus moneys.
 - 3. Rights of purchasers.
 - 4. Proof of foreclosure and sale.
 - 5. Deeds.

XII. REDEMPTION.

- (a) *The right in general.*
- (b) *Proceedings in equity.*
 - 1. When allowed; who entitled.
 - 2. Pleadings and practice.
 - 3. Decree.
- (c) *Statutory redemption from foreclosure by advertisement.*

XIII. ACTIONS AT LAW FOR THE DEBT OR DEFICIENCY.

As to mortgages by administrators and guardians, see ESTATES OF DECEDENTS, §§ 332-342; GUARDIANSHIP, §§ 111, 112.

As to CHATTEL MORTGAGES, see that title.

When fraudulent as against creditors, see FRAUD, II.

As to notice and recording, see NOTICE; RECORDING ACTS.

Taxation valid, see CONSTITUTIONS, § 331.

I. GENERAL PRINCIPLES.

(a) *Nature of mortgage.*

1. A mortgage is no longer in this state what it was originally at the common law — a grant of the land to the mortgagee, defeasible upon condition subsequent, and to become absolute on failure to pay at the specified time. It is a mere chattel interest, a security or lien upon the land for the debt, which can be enforced only by sale on foreclosure. The estate in the land is still in the mortgager; his title is a legal one, and the mortgagee gets no title or right of possession until after foreclosure: *Dougherty v. Randall*, 8 M. 581; *Batty v. Snook*, 5 M. 281; *Caruthers v. Humphrey*, 12 M. 270; *Ladue v. Detroit & M. R. Co.*, 13 M.

380; *Hogsett v. Ellis*, 17 M. 351; *Ormsby v. Barr*, 22 M. 80; *Gorham v. Arnold*, 22 M. 247; *Wagar v. Stone*, 36 M. 364; *Hazeltine v. Granger*, 44 M. 503.

Further as to the rights, etc., of mortgager and mortgagee, see *infra*, IV, V.

2. Though mortgages are not, in this state, conveyances of lands, yet they are included in the term "deed" in the statute punishing the uttering of forged deeds: *People v. Caton*, 25 M. 388.

(b) *What constitutes; equitable mortgages.*

3. An instrument in trust executed by a railroad company to secure the payment of bonds was *held* to be a mortgage in the ordinary sense of the term, not a sale: *Chippewa Supervisors v. Auditor-General*, 65 M. 408 (April 14, '87).

4. A written agreement between the parties to a deed made at the same time, and allowing the grantor to keep possession of part of the property deeded, for a specified term, in consideration of his assistance in selling it again, in which event he was to receive certain specified benefits, *held* not to operate to give the grantor a lien in the nature of a mortgage, and to be no defence to a summary proceeding by the grantee under the statute to obtain possession of the land at the expiration of the term therein granted: *Ellis v. Broun*, 29 M. 259.

5. An assignment of a mortgage of lands for the purpose of securing the assignor's debt constitutes a mortgage of a mortgage: *Graydon v. Church*, 7 M. 86; *Wallace v. Finnegan*, 14 M. 170.

6. Where an assignment of a land certificate is meant by the parties as security for debts existing and to be incurred, the relation established between them is that of mortgager and mortgagee: *Gunderman v. Gunnison*, 39 M. 813.

7. Defendant having assigned certain land certificates, in form absolutely, but in fact as security for debts he was owing to complainants and for advances to be made, and having afterwards paid up the indebtedness and advances, but desiring further advances, it was arranged he should redeliver the assignments as security for such further advances as complainants should make him; and redelivery thereof being made, further advances were made by complainants on the faith of such security, and settlements were had from time to time and defendant's due-bill taken, with interest at ten per cent., for the amount found due. *Held*, that a bill in equity will lie on

complainants' behalf for an accounting as to the amount of such advances and for the foreclosure and sale of such securities unless payment should be made in a reasonable time, in which event the certificates are to be assigned back: *Case v. McCabe*, 35 M. 100.

8. A. conveyed a farm to B., his son-in-law, in consideration of \$2,500. By the same instrument, B. bound himself to pay the debts of A., especially a mortgage on the farm, and to account to A. for the balance of the \$3,500, after paying the debts; and B. promised and obligated himself, besides the payment of the \$2,500, to board, lodge and clothe A., in health and in sickness, during his natural life, etc., and A. reserved to himself the right to live with B.; and for the security of the payment of the \$2,500, and the fulfilling the "clauses and conditions" above stated, B. was not to give, alien, exchange or sell the farm without permission of A., and the farm was to stand hypothecated until the payment in full of the \$3,500, when A. was to "release the present mortgage in a legal manner." *Held* not to be a deed of trust, or a deed upon condition, but an absolute deed, incorporating within it a lien in the nature of a mortgage: *Campau v. Chene*, 1 M. 400.

9. An agreement in writing, intended by the parties to give a lien on real estate for the payment of a debt, though not witnessed as required by statute to convey real estate, is good as an equitable mortgage: *Abbott v. Godfroy's Heirs*, 1 M. 178.

10. P. contracted to sell to A. the undivided half of a tract of land at a price specified in the contract, and by the same contract A. agreed to render his personal services in the care, management and sale of the land. P. conveyed to A. the land in pursuance of the contract, taking back a mortgage to secure its performance. A. having failed to perform on his part, P. files a bill to foreclose the mortgage and claims an equitable lien upon his interest in the land, not only for the value of services which were not rendered, as required by the contract, but for the amount of a deduction from the real value of the interest sold to A., made as a special inducement to A. to enter into the contract. *Held*, that the considerations moving P. to contract with A. were of such a nature as to present an inherent difficulty in the attempt to estimate the pecuniary damage to P.; and whether or not P. would have a remedy at law for damages occasioned by the breach of contract, they are of a character too uncertain to constitute the subject of an equitable mortgage, or a vendor's lien: *Payne v. Avery*, 21 M. 524.

11. A wife gave a deed of her separate estate, in which her husband joined, to secure a loan made to them, and all parties executed a written instrument explaining the transaction. This arrangement was abandoned, however, and the lender made a new one with the husband to which the wife did not, so far as appears, assent, and which was confined to securing debts of the husband. *Held*, that proceedings would not lie to enforce the deed as an equitable mortgage: *Harvey v. Galloway*, 48 M. 581.

12. A stipulation for insurance for a mortgagee's benefit was *held* in equity to be an adjunct to the mortgage, and as binding the mortgager and all others in his place without notice: *Miller v. Aldrich*, 81 M. 408.

(c) *Deeds absolute on their face; defeasance.*

1. Generally.

As to rights under deeds in form absolute, see *infra*, §§ 228, 229, 234, 237, 238.

13. To render a conveyance absolute in its terms a mortgage, it must be so in its inception. It can never become a mortgage by any subsequent act; and if it once become an absolute deed for a moment it must always remain so: *Swetland v. Swetland*, 8 M. 483.

14. Where it appears that, by express agreement of the parties, a debt due from the grantor to the grantee was extinguished by the deed, or that the money paid was not advanced by way of loan, or that it is at the option of the grantor to refund or to keep the money, the transaction is a conditional sale and not a mortgage. But if the remedies of grantor and grantee are reciprocal—the former bound to repay the money, the latter to reconvey the premises—then the deed will be construed a mortgage: *Ibid*.

15. An instrument of conveyance that on its face purports to be given to secure a payment is merely a mortgage: *Cowles v. Marble*, 37 M. 158.

16. Where a deed is given by a debtor to his creditor to secure a debt, the effect only of a mortgage can be given to the transaction, whatever the intent of the parties: *Hosley v. Holmes*, 27 M. 416.

17. A deed may be properly taken as security when the amount to be secured is uncertain and depends on future advances: *Abbott v. Gregory*, 39 M. 68.

18. A debtor conveyed certain lands to a trustee to be sold for the payment of debts, and the deed provided that the surplus and all un-

sold lands be returned to him after deducting costs and expenses. *Held*, that it was properly treated as a mortgage: *State Bank v. Chappelle*, 40 M. 448.

19. A conveyance of land to trustees to secure an indebtedness is only a mortgage, and does not preclude the owner from claiming the title in fee and seeking relief against an illegal tax: *Flint & P. M. R. Co. v. Auditor-General*, 41 M. 685.

20. A quitclaim deed cannot be considered as a final surrender of all the grantor's interest, where the intention was in fact to secure the grantee for a debt due him from the grantor, and enable him to dispose of the property the more readily for the satisfaction of the debt: *Curtiss v. Sheldon*, 47 M. 263.

21. A deed to secure money lent, but with an understanding that the land is redeemable by its payment, is a mortgage as between the parties and those who purchase from them with notice: *Hurst v. Beaver*, 50 M. 612.

22. On exchanging real estate one of the parties gave notes secured by a mortgage upon that which he received, but afterwards, being unable to pay them, reconveyed the property on an oral agreement that the other party should sell it, satisfy the mortgage from the proceeds, and pay him the surplus. The latter sold the property, but did not pay over the surplus, and the former recovered judgment for it in another state, on which judgment he afterwards brought suit in this state. *Held*, (1) that the plaintiff's right to recover in the former suit was based on the fact that the reconveyance was meant only as a mortgage; (2) that defendant's offer in the latter suit to show how the property was paid for when first conveyed was rendered immaterial by the judgment; (3) that in the later suit the defendant's offer of the reconveyance to show that he was entitled to wheat growing on the land, and to the rent of the premises to the date of their sale, the plaintiff having kept possession, was properly rejected, it having been adjudged that the conveyance was only a mortgage, and that the mortgagee had received the full amount of his debt: *Hunt v. Middlesworth*, 44 M. 448.

23. Where a judgment debtor gave to the attorney of the creditor a deed of lands authorizing him to sell and dispose of them, and apply the money in payment of the judgment, and to execute and deliver to the purchaser a deed, provided the judgment was not paid in six months from that time; and the judgment not being paid the attorney caused the lands to be sold at public auction, and they were struck off to the creditor who was the highest

bidder, it was held that the deed was a mortgage, and the right of redemption could not be barred except by foreclosure either at law or in equity: *Comstock v. Howard*, W. 110.

24. Where the grantee in a deed absolute given as a security sells and conveys to one who has full notice of all the facts, such second grantee will take no greater interest than his grantor had in the premises, and he will hold them subject to be redeemed on payment of the amount due on the mortgage: *Wadsworth v. Loranger*, H. 118; *Emerson v. Atwater*, 7 M. 12.

2. Construction; evidence.

25. In doubtful cases courts of equity incline to construe a deed with a condition to be a mortgage; and may do so where a deed and bond to convey are concurrent instruments, in the absence of facts showing the intention of the parties to be otherwise: *Sweetland v. Sweetland*, 8 M. 482.

26. In doubtful cases the court will lean to the conclusion that a security rather than a conditional sale was intended; and where the idea that a security was intended is conveyed with reasonable distinctness by the writings, and no evil practice or mistake appears, the court will incline to regard the transaction as a security, because of the general reasons which in all cases of uncertainty favor written evidence. But if it satisfactorily appears that a conditional sale was intended, the transaction must retain the stamp which the parties themselves have given to it: *Cornell v. Hall*, 23 M. 377.

27. A deed absolute in form may be proved by parol to have been intended by the parties to operate only as a mortgage for money loaned; and such proof will entitle the grantor to redeem: *Wadsworth v. Loranger*, H. 118; *Emerson v. Atwater*, 7 M. 12; *Van Wert v. Chidester*, 31 M. 207; *Barber v. Milner*, 48 M. 248.

28. A deed in form absolute given by one who held a power of attorney to sell and convey may be shown by admissions of the grantee to be a mere security for money loaned: *Jeffrey v. Hursh*, 49 M. 31.

29. Whether a deed in form absolute was in fact a mortgage is a question of intent, and such intent is to be gathered from the instruments executed and from the facts and circumstances attending the transaction, as well as from other testimony: *Jeffery v. Hursh*, 58 M. 246.

30. The form of a contract cannot prevent an examination of the whole transaction on a

bill in equity, if it was entered into in continuation of an earlier agreement: *Curtiss v. Sheldon*, 47 M. 262.

31. Parol evidence that a deed *prima facie* absolute was only meant as a mortgage must be explicit; mere general declarations to that effect by a party claiming the benefit of such a construction are not enough: *Johnson v. Van Velsor*, 48 M. 206.

32. The parol evidence to show that a warranty deed absolute in form was intended to secure a debt and to operate as a mortgage must be clear, unequivocal and convincing, or the presumption that the instrument is what it purports to be must prevail: *Cadman v. Peter*, 118 U. S. 73.

33. To establish an equitable right in lands in opposition to the muniments of title the parol evidence of the understanding of the parties must be very clear and distinct: *Van Wert v. Chidester*, 31 M. 207.

34. One who files a bill to have a deed given by him construed as a mortgage has the burden of proving beyond reasonable doubt that this was actually meant to be its effect: *Tilden v. Streeter*, 45 M. 533.

35. A bill to have a deed construed as a mortgage cannot be sustained unless there is convincing proof in complainant's favor, even though defendant's showing is such as to establish no claim on the confidence of the court: *Ibid.*

36. The fact of relationship between the parties to a bill filed to have a deed construed as a mortgage has no force except as it is pertinent to the ease and will aid in proving or disproving it: *Ibid.*

37. In a suit brought by the executors of the grantee in a deed absolute to have it declared a mortgage and foreclosed, and the proceeds applied upon the payment of the debt, the court was equally divided as to whether the evidence showed the deed was intended as a mortgage or not: *McMillan v. Bissell*, 63 M. 66.

38. The question whether a deed absolute was meant as a mortgage or not may properly be submitted to a jury where the fact depends on extraneous matters: *Stevens v. Hulin*, 53 M. 93.

3. Defeasance.

39. Where land is conveyed by a debtor to his creditor, and an instrument given back which shows that the land is to be reconveyed on payment of the debt, such instrument cannot be regarded as an agreement for the sale of the land, but the transaction is plainly a conveyance of the land as security for the

debt — in other words, a mortgage: *Enos v. Sutherland*, 11 M. 588.

40. Where a contract is thus given which is really an instrument of defeasance, it is not essential that it be sealed: *Ibid.*

41. Where A., being indebted to B. in the sum of \$2,000, secured on real estate, conveyed to him the same real estate, and took back a contract for the purchase of it from B. for \$2,000, payable as therein specified, which contract provided that "time is now, and shall be at all times, considered and deemed a material part of this contract;" and that on default being made by A. in any of its conditions to be performed by him, he should thereupon forfeit all rights under the same, and be thereafter a tenant at will to B. at a specified yearly rent; and it appeared that the transaction was intended merely to secure B. the \$2,000 due him, *held* to be a mortgage; and that A. did not forfeit his right to redeem by a failure to pay at the time specified: *Batty v. Snook*, 5 M. 281.

42. The mortgager of land that was worth considerably more than the mortgage debt deeded it to the mortgagee and took back a contract of sale which provided that, in case of default in payment, the party of the first part should be entitled to immediate possession, and should also have a lien on the crops. *Held*, that the deed and contract together, should be construed as a mortgage, amounting, only, to a change in the form of a security for a continuing liability, and that it was unimportant that the conveyance and defeasance were, as indeed was formerly customary, separate instruments: *Ferris v. Wilcox*, 51 M. 105.

43. The character of a deed as security is not destroyed by the fact that no defeasance was given until after the delivery of the deed, provided the transactions were substantially contemporaneous and were manifestly meant to amount to a mortgage: *Jeffery v. Hursh*, 58 M. 246.

44. The recital in a bond of defeasance that the obligor will reconvey such interest as he has now acquired establishes the contemporaneous character of the deed and defeasance and cannot be contradicted by parol: *Ibid.*

45. A bond of defeasance, being under seal, is an instrument of as high order as the deed which it accompanies: *Ibid.*

46. A bond to reconvey is valid as a defeasance even though it covers lands belonging to a third person and included with the grantor's land by virtue of a power of attorney to him to sell them. It would be good at law as to the grantor's land, and in equity as to the third

person's, the last not being mortgageable under a power of sale: *Ibid.*

47. A deed absolute taken in connection with a bond or separate defeasance or agreement, executed at the same time, to reconvey on payment of a stated sum, constitutes a mortgage if the instruments are of the same date or are executed and delivered at the same time and as one transaction. When this is the case it is a conclusion of law that they constitute a legal mortgage: *Ibid.*

48. A prior unrecorded defeasance holds as against an attachment lien: *Columbia Bank v. Jacobs*, 10 M. 349.

49. A defeasance is not required to be recorded except where it relates to a conveyance in form absolute: *Russell v. Waite*, W. 31.

(d) *Renewal.*

50. A mortgage debt having been extinguished by a deed of the premises to the mortgagee, who contracted to reconvey the remainder after satisfying the indebtedness out of the property, it could be revived as a lien upon the property only by a mutual rescission of the deed and contract, which would imply a reconveyance so far as to put all parties *in statu quo*, or by a new subsequent agreement founded upon a new and sufficient consideration; it would be idle to talk of the abandonment of the contract under the circumstances: *McCabe v. Farnsworth*, 27 M. 52.

51. If a mortgage debt were revived by a new and subsequent agreement, the obligation to pay, and the lien, would rest, not upon the old mortgage and note, but upon the new agreement, which alone would constitute the basis of the right to enforce payment or to foreclose, and must be pleaded in an action therefor. Evidence of such an agreement, or of subsequent dealings had in reference to reviving the lien, could not be admitted under a foreclosure bill relying upon the original note and mortgage: *Ibid.*

As to restoration of mortgage discharged by mistake, see EQUITY, §§ 244, 245, 331-333.

II. VALIDITY; CONSTRUCTION.

As to mortgages by corporations, see CORPORATIONS, §§ 134-139; PLANK ROADS, VI; RELIGIOUS SOCIETIES, §§ 17-25.

(a) *Capacity of parties.*

52. At the common law and prior to H. S. § 5657 one could not give a valid mortgage on lands held adversely to him: *Hubbard v. Smith*, 2 M. 207.

53. Where land is conveyed and a mortgage taken back for the purchase money, the deed and mortgage together constitute but one transaction, and the title only passes by the deed subject to the mortgage. And where the grantee in such case is an infant, he may disaffirm the deed on coming of age, but by retaining the land he affirms the mortgage: *Young v. McKee*, 18 M. 552.

54. A mortgage given by an infant *feme covert* to secure her husband's debt is absolutely void: *Chandler v. McKinney*, 6 M. 217.

55. A wife's deed absolute in form cannot be enforced as an equitable mortgage where the arrangement was simply to secure the husband's debt and was not assented to by her: *Harvey v. Galloway*, 48 M. 531.

56. A married woman may mortgage her property to secure her husband's or another person's debt: *Watson v. Thurber*, 11 M. 457; *Damon v. Deeves*, 57 M. 247.

57. A mortgage made by an insane person was set aside even though the mortgager was not so manifestly insane at the time as to make fraudulent the conduct of the mortgagee in making the bargain it was meant to secure: *Curtis v. Brownell*, 42 M. 165.

58. The mortgagees of an insane person's grantee cannot be considered *bona fide* purchasers in order to uphold the deed: *Rogers v. Blackwell*, 49 M. 192.

59. A mortgage given by a woman of feeble intellect to a person in a confidential relation as a security for a debt of her son was set aside on the ground that the mortgager did not fully understand what she was doing: *Wartemberg v. Spiegel*, 31 M. 400.

60. The mere addition of the title "guardian" to the name of a mortgager will not of itself invalidate the mortgage where it is manifestly not the purpose in giving it to act as guardian: *Brayton v. Merithew*, 56 M. 166.

61. A mortgage by a tenant in common upon his interest for his individual debt is valid unless it appears that the real estate was purchased out of partnership funds and held for partnership purposes: *Ruppe v. Steinbach*, 48 M. 465.

62. One who holds a power of attorney to sell and convey lands has no power to mortgage them, and a deed from him in form absolute, but given as a mere security for money loaned, will not sustain an ejectment: *Jeffrey v. Hursh*, 49 M. 81, 58 M. 246.

63. There can be no mortgage without a mortgagee: *Sinclair v. Slawson*, 44 M. 123.

64. A mortgage may be given to one per-

son in trust for another: *Comstock v. Stewart*, W. 110.

65. A county may take security from an ex-treasurer for moneys received by him and not accounted for; and may take it in the name of a trustee: *Bay City State Bank v. Chapelle*, 40 M. 447.

66. Where A. was pardoned on condition he secured the payment of \$1,000 to the county, a mortgage securing such sum was held good though made, not to the county as such, but to the county commissioners charged by law with "the care of the county property, and the management of the business and concerns of the county;" by implication of law a trust arose, and the mortgagees held as trustees for the county: *Rood v. Winslow*, W. 340, 2 D. 68.

67. A mortgage executed to a bank organized under the unconstitutional law of 1837 cannot be foreclosed: *Hurlbut v. Britain*, 2 D. 191.

68. A mortgage made to a corporation organized under a void law cannot be enforced, but a receiver for the corporation can demand an accounting in equity for the debt sought to be secured thereby, such accounting to be with interest after allowing all payments made: *Burton v. Schildbach*, 45 M. 504.

(b) *Mistake; coercion; undue influence; fraud; forgery.*

69. A wife's claim that when she joined in a mortgage with her husband she did not know that it included certain lands belonging to herself, that she had not read the mortgage or heard it read, and that, if she had, she would not have recognized her lands by the description, was not sustained where it appeared that the mortgagee had acted in good faith and had done nothing to mislead her, and where the security, excluding her land, would fall far short of satisfying the debt: *Peake v. Thomas*, 39 M. 584.

70. Where a husband, having got his wife's consent to mortgaging her land for the purchase price of goods bought by him, obtained — making, however, no false representations — the execution of a mortgage covering, in addition to such purchase price, an old debt of his whereof she was not informed, the mortgage was held valid as to the purchase price only: *Smith v. Osborn*, 33 M. 410.

71. The defences of undue influence and coercion, set up by a married woman against a mortgage given on her own property to se-

cure her husband's debt, were *held* not sustained where it appeared that she gave it with reluctance and after much persuasion by her husband, and at first declined to acknowledge it, but finally made an acknowledgment in the usual form and afterwards admitted the validity of the security: *Watson v. Thurber*, 11 M. 457.

72. A married woman sought to have cancelled, on the ground of mistake and fraud in the execution, a mortgage given by her on her lands to secure her husband's debt, but the proofs failed to make out her case: *Frickee v. Donner*, 35 M. 151.

73. A man who had promised to loan money to a widow on her giving him a mortgage upon lands wherein she had the apparent legal title of record, fraudulently procured from her a mortgage naming, without her knowledge, a third party as mortgagee. No money was ever paid to her by either person, and the circumstances were such that the mortgagee was chargeable with knowledge of all facts known to the one who procured the mortgage for him. *Held*, that the security was not enforceable either against the mortgager or against the interests of an infant heir for whom she was in equity holding title: *Terry v. Tuttle*, 24 M. 206.

74. Where a mortgage was given by the vendee in a land contract in the full belief, induced by the mortgagee's acts and statements, that the rights of the latter were paramount to any that could be claimed under the original contract, and that he had done nothing to recognize or make himself responsible for sales by the mortgager's vendors, which statements were untrue, the mortgager is entitled to have the mortgage set aside as procured by fraud, unless he was, at the time, chargeable with such notice of the facts as should preclude him from complaining: *Converse v. Blumrich*, 14 M. 109.

75. The rightful owner of lands who has given a mortgage in purchase of a pretended title fraudulently obtained and set up against him is entitled to have it set aside: *Hanold v. Bacon*, 36 M. 1.

76. A purchase-money mortgagee who had been in possession of the land for five years before mortgaging cannot reduce the amount of his mortgage by showing that he was defrauded in the purchase by false representations concerning the land and the crops thereon: *Wright v. Peet*, 36 M. 213.

77. Where a son had extorted a mortgage from his parents by oppressive means and for an inadequate consideration, while he was practically in a position of guardianship over

them and their property, the security was reduced to what was justly due: *Bowe v. Bowe*, 42 M. 195.

78. A mortgage given for a large sum by a dissolute spendthrift upon real estate to which he was entitled as heir, to secure payment of small sums of money and the purchase price of lands of little value for which the mortgager had no use, but which the mortgagee required him to buy as a condition of lending him any money, was *held* not sustainable in equity: *Butler v. Duncan*, 47 M. 94.

79. A son agreed to support his father and family, and the father conveyed his farm to him. About five years afterwards the son conveyed the farm to his brother, who gave him a mortgage on it for some stock and for expenditures on the land. The grantee immediately conveyed the land to the father, who knew of the mortgage and did not complain of it. But three years later he filed a bill asking that it be cancelled as fraudulent against himself. *Held*, that the bill could not be sustained on this showing: *Tuttle v. Tuttle*, 41 M. 211.

80. A mortgage fraudulent as to creditors may be, and usually is, good as between the parties, if there is a consideration to support it: *Hess v. Final*, 32 M. 515.

81. One who has given a mortgage to be sold for a fraudulent purpose cannot set up the fraud as a defence to the mortgage in the hands of a *bona fide* purchaser: *Bloomer v. Henderson*, 8 M. 395.

82. A voluntary mortgage is fraudulent only as to those who are or may be defrauded by it: *Brigham v. Brown*, 44 M. 59.

83. Nor would it defraud a mere subsequent mortgagee actually or constructively notified: *Ibid.*

84. The burden of proving fraud alleged as a defence to a mortgage is on the mortgager: *Perrett v. Yarsdorfer*, 37 M. 596.

85. A mortgage was *held* to have been forged, and foreclosure was denied, where it was shown that the mortgagee was a grasping money lender, unlikely to run risks, that the mortgage was for a large sum on property of little value, contained no release of dower, and had been assigned without any apparent consideration to a non-resident brother of the mortgagee, in whose name the foreclosure was brought: *Matteson v. Morris*, 40 M. 52.

86. A forged mortgage is not valid in the hands even of a *bona fide* holder unless he came into possession of it under circumstances creating an equity in his favor against the nominal mortgager: *Camp v. Carpenter*, 52 M. 375.

(c) *Formal requisites.*

87. If a married woman freely and fully acknowledges as her free act and deed a mortgage, to which her name was penned by her husband with her assent, she accepts the signature as her own and is bound by the mortgage: *Johnson v. Van Velsor*, 43 M. 208.

88. The mortgagers of property deeded it, and afterwards gave a new mortgage in place of the former one for the purpose of correcting an error of description. The consent of the grantees to the execution of the later mortgage was attached thereto in writing, but was signed by only one, the name of the other being added "by his attorney in fact." *Held*, that the giving of consent by the one who signed was equivalent to uniting in the mortgage, and bound his interest and that of any one claiming under him to the extent to which his interest was encumbered by this consent; but that the other's interest was not bound: *Pool v. Horton*, 45 M. 404.

As to requirement of wife's signature to mortgage of HOMESTEAD, see that title, §§ 74, 75, 79-86, 88, 90, 92, 93, 98, 99, 102.

89. H. S. § 7778 operates to give a mortgage not under seal all the force that a sealed one would have: *McKinney v. Miller*, 19 M. 142.

90. A mortgage without witnesses is good as between the parties: *Baker v. Clark*, 52 M. 22.

91. Prior to act 62 of 1877 (H. S. § 5662) the husband's presence during the wife's acknowledgment of a mortgage, in which she joined to bar dower or homestead rights, raised a presumption of coercion, and defeated such acknowledgment: *Fisher v. Meister*, 24 M. 447.

92. A homestead mortgage executed at the joint solicitation and in the presence of the husband and one of the mortgagors, and acknowledged in their presence — if at all — when the wife could not understand English, and when the officer made merely a formal inquiry of her in that language, he speaking no other, was *held* invalid: *Ibid*.

93. But even where a mortgage upon the husband's homestead was given in 1871, chancery refused to set it aside for the mere reason that it was acknowledged by the wife in her husband's presence; there being no showing of compulsion or influence, the consideration being sufficient, and the wife having taken no steps to repudiate the security: *Norton v. Nichols*, 35 M. 148.

94. A wife sought to avoid a homestead mortgage on the ground that she never know-

ingly signed or acknowledged it. But the justice who took the acknowledgment testified distinctly to the facts, and there was no doubt of the mortgagee's good faith or of the money's having been borrowed and used to build a house on the premises; and the mortgage was sustained: *Hourtienne v. Schnoor*, 38 M. 274.

95. While a certificate of the acknowledgment of a mortgage may be overthrown by proof of fraud or duress, yet the bare oath of the mortgager, opposed by the officer's testimony, cannot overthrow the presumption of validity: *Johnson v. Van Velsor*, 43 M. 208.

96. An officer taking an acknowledgment is bound to inform himself of the identity of the parties, and a proper certificate of acknowledgment is presumptive evidence of the genuineness of the mortgage to which it is attached: *Cameron v. Culkins*, 44 M. 531.

97. As a wife's mortgage upon her own land is not invalidated by her husband's joining in it, irregularities in the execution or acknowledgment on the husband's part of such a mortgage do not impair its validity: *Frickee v. Donner*, 35 M. 151. See *infra*, § 131.

(d) *Delivery.*

98. Where a mortgage has been left with a firm of attorneys, acting for both parties, to be delivered only upon the consent of both, and there is a conflict of testimony as to whether or not such consent was ever given, the fact that the mortgagee is found in possession of the mortgage, and the mortgager in possession of an instrument contemporaneously executed by the mortgagees to show what the mortgage was given to secure, the actual delivery of such instrument not being doubtful, raises a presumption that the mortgage also was actually delivered: *Hess v. Final*, 32 M. 515.

99. A mortgage left with a third party to be delivered, when a prior mortgage had been discharged and other conditions performed, was assigned by the mortgagee to the depositary before the conditions had been fulfilled, and was afterwards assigned to another party before it fell due. *Held*, that there had been no delivery: *Cressinger v. Dessenburg*, 42 M. 580.

100. A purchase-price mortgage executed and deposited in escrow to await completion of title in the mortgager, in fulfilment of an oral bargain by the mortgagee to sell the land to him, is, at the time of execution, without foundation or consideration, and is subject to recall at all times before the condition is per-

formed; and a delivery thereof in violation of the arrangement does not operate to make it a valid mortgage, binding on the mortgager: *Powell v. Conant*, 33 M. 396.

(e) *Consideration.*

101. As between the parties to it and their representatives, in a controversy respecting the property, the mortgage is sufficient evidence of consideration: *Webb v. Mann*, 3 M. 139.

102. It is the presumption of fact that the sum mentioned in a mortgage as the consideration therefor is correctly stated: *Wiswall v. Ayres*, 51 M. 324.

103. A mortgage given by the vendee in a land contract to secure the purchase price of a resale at a larger sum made to him by his vendor's grantee who had no greater rights than the vendor, *held* without consideration: *Converse v. Blumrich*, 14 M. 109.

104. A note and mortgage given for a fixed sum and payable absolutely, but with no consideration except an undertaking to furnish goods which the mortgagees afterwards failed to furnish, cannot be enforced where the holder is not a *bona fide* holder for value: *Fisher v. Meister*, 24 M. 447.

105. Where a mortgage was given on the understanding that the mortgager should have a future credit, and the mortgagee's agent, who took it, knew that it would not have been given otherwise, it cannot be enforced for a different purpose, and if no credit is thereafter given and no advances made, it is held to be without consideration: *Mizner v. Kussell*, 29 M. 229.

106. The non-payment of any consideration for a mortgage deprives the mortgagees of all equities: *Terry v. Tuttle*, 24 M. 206.

107. A mortgage cannot be sustained without an obligation capable of proof: *Sackner v. Sackner*, 39 M. 89.

108. A man caused land which he had paid for to be deeded to his son. The son conveyed it to his wife by a voluntary conveyance, but without his father's knowledge, and a homestead was created which absorbed about half the purchase money. The father afterwards induced her to mortgage it to him in order that one of the son's creditors might be forced to make better terms. The mortgage was not intended as a genuine security for a real or supposed debt. A bill filed by the daughter-in-law to set aside the mortgage was allowed: *Ibid.*

109. Where a mortgage does not represent a real debt chancery may order it to be sur-

rendered and cancelled; for a case where this was done, see *Teed v. Marvin*, 41 M. 216.

See EQUITY, § 251.

(f) *The debt secured.*

110. A person made a bond and mortgage to a partnership, with which he had dealings in the way of mutual accommodation discounts, acceptances and indorsements, and took the receipt of the partnership therefor, which, after describing the papers, concluded as follows: "From which we are to deduct our account with him, and to pay him the balance, or to be returned to him at our option." The party subsequently pursued a similar course of business accommodations, the balance being always against the mortgager, but never equaling the amount of the bond and mortgage. *Held*, that they must be considered as security for all these dealings: *Brackett v. Sears*, 15 M. 244.

111. The fact that the balance of accommodations and advances was always in favor of the mortgagees would not entitle them to charge commissions on such balance unless it had been so agreed: *Ibid.*

112. A mortgage which is so drawn as to cover any demands which the mortgagees may hold against the mortgager cannot authorize the mortgagees to buy up claims against the mortgager and enforce them unless the provision that he may do so is very clearly expressed. The provision can ordinarily cover only such demands as arise directly out of the dealings between the mortgager and mortgagee: *Lashbrookes v. Hatheway*, 52 M. 124.

113. A printed clause in a mortgage extending it to all debts not covered by the amount specifically stated *seems* to be to some extent counterbalanced by the presumption arising from the fact that the stamp on the mortgage corresponds to the specified sum: *Ibid.*

114. A mortgage given to secure all existing debts of the mortgager to the mortgagee is valid without specifying the debts or their amounts. And a subsequent purchaser of the land, with actual or constructive notice of the mortgage, takes subject to it: *Michigan Ins. Co. v. Brown*, 11 M. 265.

115. Where a mortgage is given to secure the mortgagee for liabilities which it is optional with him to incur or not, such mortgage is at any time a lien upon the land only to the extent of the liabilities then actually incurred; and a deed given by the mortgager and placed upon record will take precedence of the mortgage as to liabilities subsequently incurred: *Ladue v. Detroit & M. R. Co.*, 13 M. 880.

116. The mortgage being duly recorded is notice to a subsequent purchaser; but he is chargeable with notice only to the extent of the liabilities which had been actually incurred prior to his purchase: *Ibid*.

117. A mortgage to secure a balance of a running account can only be enforced to the extent of money actually advanced or indebtedness actually accruing: *Brckett v. Sears*, 15 M. 244.

118. A mortgage given for money advanced and lands to be conveyed can only be enforced by the mortgagee to the amount of money advanced, when he has wrongfully refused to convey the land: *Robinson v. Cromelien*, 15 M. 316.

119. Where, after a mortgage has been given securing a bond, the mortgager's due-bill is substituted by parol agreement for part of the bond, and is made payable at a different date from any provided for in the mortgage, the mortgage-lien is not held to secure the due-bill, unless, at least, it is clearly shown that it was so agreed when the exchange was made: *Tucker v. Alger*, 30 M. 67.

120. Where a person indebted on certain notes gives a mortgage deed for a sum less than the amount of the notes, and which does not refer to them or expressly identify the debt, or specify a time for payment, or make any provision for interest, it is due as soon as given, and is by implication a security bearing interest from its date, or at least from the maturity of the notes: *Eaton v. Truesdail*, 40 M. 1.

121. Describing the same parcel twice in a deed thereof from a mortgagee to a mortgager does not show that it was twice taken into account in fixing the amount of the mortgage: *Hart v. Carpenter*, 36 M. 402.

122. Where, in a conditional pardon, the person pardoned was required to secure the payment of \$1,000 to the county, and the county commissioners obtained a mortgage for \$1,150 (the \$150 being added as the costs of prosecution of the mortgager), the mortgage was held good for \$1,000 and void as to the residue: *Rood v. Winslow*, W. 340, 2 D. 68.

123. A mortgage given in Michigan on settlement of a debt that is payable in Canada is not invalidated by the fact that in fixing the amount of it the current premiums on gold were allowed upon the amount of the Canadian debt, Canadian currency being then on a gold basis: *Oliver v. Shoemaker*, 35 M. 464.

124. A mortgagee cannot take claims held by third persons against his mortgager and

include them in his mortgage unless the mortgager consents and third parties are not prejudiced: *Perrin v. Kellogg*, 38 M. 720.

(g) *Property or interests covered.*

1. Generally.

125. Where a mortgage purports on its face to convey an indefinite interest in the premises, not exceeding that possessed by the mortgager, and does not profess to transfer the whole or any particular portion of the premises, or any specific undivided interest, it must be taken as meaning to convey the right which the mortgager had, and subject to all existing equities, and that right or its extent is to be ascertained by inquiry; and the mortgagee is bound to make inquiries and is chargeable with notice of all the facts to which such inquiries must lead: *Case v. Erwin*, 18 M. 434.

126. A purchase-money mortgage cannot attach to anything which the purchaser did not own at the time of giving it: *Brown v. Phillips*, 40 M. 264.

127. The fact that one who has purchased undivided shares of certain property has mortgaged his interest as undivided shares does not hinder him from afterwards mortgaging the whole property when he has acquired the remaining shares: *Ibid*.

128. Where lands are conveyed to three persons, the deed making no reference to a partnership which the three form, one who takes, without notice that such lands are partnership property, a mortgage from one of the three on an undivided third, is not affected by the partnership equities: *Adams v. Bradley*, 13 M. 346.

129. A mortgage by one partner of his undivided share in lands which had been conveyed to the partners by deed on record, specifying their respective interests, covers such share without being subject to latent equities of the other partners whereof the deed supplies no notice: *Van Slyck v. Skinner*, 41 M. 186.

130. A mortgage taken in good faith from husband and wife, and covering property the record title to which was in the husband, is not invalidated as to parcels which the wife afterwards claims under an unrecorded deed from her husband on the ground that he had included them in the mortgage by a mistake for which the mortgagee was not to blame: *Shepard v. Shepard*, 36 M. 173.

131. The fact that the instrument describes the mortgager as the wife of one who joins

with her in executing a mortgage of her land does not invalidate it, and it operates to convey her interest as absolutely as though her husband had not joined. Her interest being a fee, and having no dower interest therein, it must be presumed she knew what she was conveying: *Yale v. Stevenson*, 58 M. 537. See *supra*, § 97.

132. A wife who has a mortgage on her husband's property does not, by joining in a subsequent mortgage thereon, subject her own mortgage interest to the lien of the later mortgage: *Kitchell v. Mudgett*, 37 M. 81.

133. A mortgagee of one who has previously voluntarily conveyed the premises to another takes nothing: *Gale v. Gould*, 40 M. 515.

134. A widow who had a life estate in land of which her children were residuary devisees gave a mortgage on the land. One of the children afterward died, so that as the child's heir she became entitled to a share in fee. *Held*, that as long as there were no outside equities, such as may rise with subsequent purchasers, the interest she acquired by inheritance inured in aid of the mortgage: *Brayton v. Merithew*, 56 M. 166.

135. A patent obtained by a mortgager and vendee in possession inures to the benefit of his mortgagee and vendor: *Haney v. Roy*, 54 M. 635.

136. Where a railroad company has mortgaged, before acquiring the title thereto, lands granted in aid thereof, it is afterwards estopped from setting up an after-acquired title against those who claim under the mortgagees: *Tucker v. Ferguson*, 22 Wall. (U. S.) 527.

2. Description.

137. A mortgage is not to be held void for uncertainty in the description of the premises, unless all means to sustain it have failed: *Dwight v. Tyler*, 49 M. 614.

138. The omission, from a mortgage, of the names of the township, county and state in which the lands lie, does not invalidate it, if there are other adequate means, such as known descriptive signs, of identifying the lands: *Slater v. Breese*, 36 M. 77.

139. A mortgage is not necessarily defeated by adding to the description elements that are untrue; such details will be rejected and the mortgage will stand if there is enough to identify the subject-matter: *Ibid*.

140. Where a mortgage described the land conveyed as "lot four of block one of the La Fountaine farm, lying south of the river road and fronting the Detroit river, being now used

and occupied with the steam saw-mill thereon by the parties of the first part," and it appeared that that portion of said farm had been platted into four lots or blocks, which had not been subdivided, that the mill was situated on the one numbered four on the plat, and the others were fenced in, used and occupied with the mill, *held*, that the words "of block one" of this description should be rejected, and the mortgage held a valid lien upon lot four, according to the evident intent of the parties: *Anderson v. Baughman*, 7 M. 69.

141. A mortgage described the premises as "the southeast quarter of the quarter of section 32," etc., containing "forty acres." The mortgager owned the entire half of a quarter section, being eighty acres, and the mortgagee, supported by the parol testimony of the scrivener who drew the mortgage, claimed that it was meant to cover this whole parcel. *Held*, that this construction would contradict the terms of the mortgage, and that the lien must be confined to a quarter section: *Hurst v. Beaver*, 50 M. 612.

142. Where property was described in a mortgage as "lot number one, in section twenty-eight, on the Forsyth or Porter farm in the city of Detroit—being on the southwest corner of Fort and Sixth streets," which description was correct except as to the section, which should have been eighteen, and it did not appear that there was a section twenty-eight on the farm named, it was *held* that the record of such mortgage was notice to subsequent purchasers of the property: *Cooper v. Bigly*, 13 M. 463.

143. A mortgage describing the property as "lot number nine of B.'s subdivision of," etc., when such subdivision contains several blocks each including a lot of that number, the land being vacant and unoccupied, is void for uncertainty as against a later mortgage giving a correct description, and its record is no notice to such subsequent mortgagee: *Stead v. Groesfeld*, 67 M. 289 (Oct. 20, '87).

144. A mortgage described the lands as follows: "Commencing at the northwest corner of land owned by Joseph Watson, on the southwest quarter of the southeast quarter of section twenty-three, in township number seven," etc., the italicised words, which would have made out a true description, being omitted. The mortgager, as grantee under a like defective description, had taken possession of the land actually meant to be conveyed, and had improved it. A latter mortgagee by the same defective description had the omission corrected by decree, and foreclosed, and a stranger bid in the land. *Held*, that the lat-

ter was bound by what the records disclosed as to the title under which he purchased, and could not resist a correction sought by the prior mortgagee: *Dwight v. Tyler*, 49 M. 614.

145. Misdescription does not invalidate a mortgage of a homestead where it would not invalidate a mortgage of any other property, and where the premises can be identified by possession: *Beyschlag v. Van Wagoner*, 46 M. 91.

146. As to the power of chancery to reform, as against the wife, a mortgage intended to include homestead premises, but which omitted them by mistake, *quere*. A subsequent grantee who bought with knowledge of the omission and with intent to defraud was not allowed to raise the defence that the wife had not signed the mortgage as to the homestead: *Ford v. Daniells*, 71 M. — (June 22, '88).

147. An alleged mistake in inserting premises that were not intended to be mortgaged calls for very strong proof, and the mortgager's testimony that he really intended to leave certain parcels out of the description is not enough: *Shepard v. Shepard*, 36 M. 173.

148. An ambiguous description in a mortgage is not to be extended by parol unless upon positive proofs: *Hurst v. Beaver*, 50 M. 612.

(h) Conditions and stipulations.

1. Generally.

149. A mortgage is to be construed in connection with other writings given at the same time, and in the light of surrounding facts; and where the condition secured is not clear the mortgage is to be construed most favorably for the mortgagee: *Stuart v. Worden*, 42 M. 154.

150. Where there was some doubt whether a mortgage was, by its condition, payable in work or in money, it was *held* to be the duty of the court to construe it most strongly against the mortgager, and in such manner as to make it a valid and binding security which might be enforced against him: *Jerome v. Hopkins*, 2 M. 96.

151. J. gave a mortgage for \$10,000, payable in several instalments. As further security for the first four instalments he gave a second mortgage on other premises, conditioned to pay said four instalments as they fell due. The second mortgage also contained a stipulation that whenever J. should build on the premises covered by the first mortgage, and cause the buildings to be insured for \$2,000, and assign the policy to the mort-

gagee, and agree to keep the same so insured during the continuance of the first mortgage, then the mortgagee should discharge the second mortgage. J. built on the premises covered by the first mortgage, and caused the building to be insured, but did not assign the policy. The said four instalments of the first mortgage having become due, and three of them remaining unpaid, a bill was filed to foreclose the two mortgages. J. (who had become insolvent) now tendered an assignment of the policy of insurance, together with a written agreement to keep the building insured, which the holder of the mortgage declined to receive. It was *held* that under the second mortgage J. had his election to pay the said four instalments as they fell due, or to perform the stipulation therein with respect to building and insuring; that his right to elect terminated when the moneys fell due, and he had no right thereafter to a discharge of the second mortgage on tendering the policy of insurance and agreement to keep insured: *Chapin v. Jacobs*, 10 M. 405.

152. Where a mortgage contained a condition for the perfection of the title which the complainant mortgagee had undertaken to convey, but which then stood in a third person, an instrument from the latter disclaiming any present title, and quitclaiming all interest "unto whom it may concern," would be of no service in perfecting the title which complainant had undertaken to convey, unless it was shown that the title held by the third person had been previously conveyed either to complainant or to some one under whom complainant claimed: *Curtis v. Goodenow*, 24 M. 18.

153. Where a mortgage for \$2,000 upon premises described in it, and payable in two years, with annual interest, was in the usual form, but contained this clause, *viz.*: "The said \$2,000 being for purchase money of the same, detained by the party of the first part as security for the perfection of the title to be made good by the party of the second part, to wit, a deed from Rice and wife (if any), or in chancery, or his legal representatives, to the party of the first part; also a mortgage to be discharged from record, made by one Joseph French, July 8, 1841, unless the same shall outlaw before the time of payment of this indenture; all to be arranged and completed on or before two years from this date, at which time this mortgage shall become due and be paid; but in case the title shall be made good as aforesaid, prior to the 9th day of September, 1867, the party of the second part shall give ninety days' notice to the par-

ties of the first part of the arrangement of said title as aforesaid, the full term not to exceed two years from the date of this instrument," it was held that the proper construction of this clause is that the \$2,000 was kept back as security for the perfecting of the title in the two particulars mentioned within two years, and that the stipulation for annual interest was to be operative only after the title had been perfected, and that the term "outlaw," as here used, referred to the time when by law the mortgage would be presumed paid. Held, also, that there being no stipulation in the nature of a forfeiture, the mortgagee's rights could not be forfeited on failure to comply by the day, if he does so within a reasonable time afterwards: *Ibid*.

154. Where a mortgage was given to an old person to secure the payment of a debt by boarding and supporting her for five years, the mortgagee was absolutely entitled to the support for the entire period, and the mortgagor was not at liberty to furnish the support or pay the money at his option: *Hawkins v. Clermont*, 15 M. 511.

155. The condition in a mortgage that the mortgagees shall have the use of a horse and buggy "whenever they or either of them may desire," etc., is joint and several, and either may have a separate cause of grievance for a failure to accommodate him individually: *Tucker v. Tucker*, 24 M. 426.

156. A court cannot make a decree in advance which shall limit below the actual damage sustained the amount of recovery for future violations of such a condition as one securing to mortgagees the use of a horse and buggy; damages from a failure to perform such a condition cannot be determined in advance, and whenever a complaint is made it must be determined on its own merits: *Tucker v. Tucker*, 24 M. 426, 27 M. 204. See BONDS, § 20.

157. Where a son had stipulated to furnish his parents the use of a horse and buggy, all parties being farmers and living in the country, it was held that \$1.50 per week was in this case a reasonable compensation for the failure to do so: *Tucker v. Tucker*, 27 M. 204.

158. Breach of the condition of a bond given by a son to support his parents during their natural lives entitles them to foreclose the mortgage securing the bond: *Wright v. Wright*, 49 M. 624.

159. Where a mortgage is conditioned to indemnify a surety, the mortgagee cannot foreclose until he has been damnified: *Thurston v. Prentiss*, W. 529.

160. But where a mortgage is conditioned

to pay the demand, as well as to save the surety harmless, the mortgagee may foreclose on failure of the mortgagor to pay, in order to raise the money to pay the demand and rid himself of responsibility: *Thurston v. Prentiss*, 1 M. 198; *Dye v. Mann*, 10 M. 291.

161. A purchase-money mortgage conditioned to become due on removal of certain specified defects of title is enforceable on performance of the condition, and is not defeasible because of other defects not specified in the condition: *Goodenow v. Curtis*, 38 M. 505.

162. Any provision in a mortgage of lands which permits ejectment on a mere default in payment, or allows an *ex parte* order for a receiver of rents and profits, or destroys in advance the equity of redemption, is contrary to equity, and a court of chancery will not enforce it: *Hazeltine v. Granger*, 44 M. 503.

163. The clause in a mortgage which provides that, upon default in payment of interest, the whole principal sum shall immediately fall due at the mortgagee's option, is in the nature of a forfeiture, and no advantage can be taken of it in cases where the mortgagor, in good faith and on reasonable grounds, denies, though erroneously, his liability to pay interest, or claims that it has been already paid: *Wilcox v. Allen*, 36 M. 160.

164. Where a purchase-money mortgage contains a stipulation that it shall be "null and void" unless a certain other mortgage, already given by the vendor upon the same property, shall be discharged, the provision is for the benefit of the vendees who give the purchase-money mortgage, and if they do not insist upon it the mortgagee in the prior mortgage cannot: *Pool v. Horton*, 45 M. 404.

165. Covenants cannot be implied in a mortgage to pay the sum secured thereby: *Hove v. Lemon*, 37 M. 164; *Brown v. Phillips*, 40 M. 264.

166. A purchaser under a mortgage is entitled to the benefit of such covenants as run with the land: *Ely v. Hergesell*, 46 M. 325.

167. A personal covenant in a mortgage will bind the mortgagor's estate after his death: *Dennis v. Sharer*, 56 M. 224.

168. A wife who joins in executing a mortgage of her husband's property does not become bound by the covenant therein to pay the debt secured: *Kitchell v. Mudgett*, 37 M. 81.

169. A wife does not become indebted to her husband's creditor merely by joining in her husband's mortgage to him: *Gantz v. Toles*, 40 M. 725.

2. Stipulations for attorneys' fees.

170. A mortgage empowered the mortgagee in the usual manner to sell, "rendering the surplus moneys, if any there be, to the said mortgager, after deducting the costs and charges of such vendue and sale aforesaid, and also [a sum specified] "as an attorney's fee, should any proceedings be taken to foreclose this indenture." It was *held* that the fee was limited to the case of a foreclosure under the power of sale; and could not be recovered on foreclosure in equity: *Sage v. Riggs*, 12 M. 313; *Van Marter v. McMillan*, 39 M. 304; *Botsford v. Botsford*, 49 M. 29.

171. The allowance in a foreclosure decree in chancery of \$75 as an attorney's fee on account of a clause in the power of sale providing for "a reasonable number of dollars" as an attorney's fee in case of foreclosure, was *held* erroneous; the clause refers to a foreclosure under the power of sale, and not in chancery: *Hardwick v. Bassett*, 29 M. 17.

172. Upon a bill to enforce the discharge of a mortgage complainant was allowed to redeem on paying the amount of the debt with interest and costs, but without the attorney fee provided for in the mortgage: *Parks v. Allen*, 43 M. 482.

173. Prior to act 133 of 1885, establishing a scale of attorneys' fees in foreclosures by advertisement, the provision for an attorney's fee in a mortgage could not be enforced upon a statutory foreclosure unless an actual sale was made, if at all: *Myer v. Hart*, 40 M. 517.

174. Where a mortgagee has taken no steps to entitle him to an attorney fee, if such a fee is recoverable at all he is bound to accept such a tender as would be sufficient without it: *Canfield v. Conkling*, 41 M. 371.

175. A mortgagee made an irregular attempt to foreclose by advertisement, and his notice, which was imperfect, was withdrawn after a single publication; *held*, that he could not demand the attorney fee provided for in case of foreclosure, and having declined the tender of the full amount due because such fee was not paid, and having refused to discharge the mortgage, he was liable to the statutory penalty: *Collar v. Harrison*, 30 M. 66.

176. Where there is no statute allowing it a stipulation in a mortgage fixing in advance a gross allowance for the attorney's fee in the event of foreclosure at law is against public policy, and cannot be enforced: *Vosburgh v. Lay*, 45 M. 455; *Louder v. Burch*, 47 M. 109; *Millard v. Truax*, 47 M. 251, 50 M. 343; *Kennedy v. Brown*, 50 M. 336; *Damon v. Deeves*, 52 M. 465.

177. A stipulation in a mortgage to pay an attorney's or solicitor's fee of a fixed sum is unlawful and void [unless authorized by statute], and cannot be enforced in a foreclosure by advertisement or in equity: *Bendey v. Townsend*, 109 U. S. 665.

178. A provision for an attorney fee does not invalidate a mortgage given by an administrator: *Griffin v. Johnson*, 87 M. 87.

179. The amount of an attorney fee stipulated in the mortgage was paid under protest in order to effect redemption from a statutory foreclosure. *Held*, that it could be recovered back from the mortgagee to whom the register had paid it over: *Vosburgh v. Lay*, 45 M. 455.

180. A mortgagee on statutory foreclosure sale bid in the premises for a sum which included the amount he was entitled to claim and also the greater part of an illegal attorney's fee. *Held*, that the surplus could be recovered from him by the mortgager who failed to redeem; it not having been paid over to the sheriff: *Kennedy v. Brown*, 50 M. 336.

181. Including an illegal fee in the sum for which a statutory foreclosure sale is made does not necessarily invalidate the sale: *Millard v. Truax*, 47 M. 251, 50 M. 343.

3. Agreements to pay higher interest.

182. Where, at a mortgager's request, a mortgage creditor has already shown forbearance, on the faith of an oral promise to pay a higher rate of interest than that borne by the mortgage, and the mortgager desires further extension without reference to any particular period, and executes a written agreement to pay such higher rate of interest from the date of the maturity of the mortgage until the principal shall be fully paid, without specifying any time of payment, it was *held* that such prior forbearance was a sufficient consideration for the promise to pay the additional interest up to the date of the agreement, and that any forbearance which took place after that on the faith of the agreement was a sufficient consideration for the promise to pay the additional interest till fully paid; also that, as between the mortgager and the mortgagee or holder of the mortgage, such agreement would be valid and have the same effect as if the original bond and mortgage had provided for such rate of interest after maturity till fully paid: *Burchard v. Frazer*, 23 M. 224.

183. But where, at the time such agreement was made, and even before the maturity of the mortgage, the mortgager had sold out all the land covered by the mortgage in separate parcels to various persons, it was *held* that as

to these purchasers it was no more competent for the mortgager to increase the mortgage debt by any such agreement than to affect them by an additional, subsequently executed mortgage for the increased sum. and that such agreement only bound the mortgager personally, and that the lien of the mortgage upon the lands so sold was only for the amount of the principal, with interest, as provided in the original bond and mortgage: *Ibid*.

184. Where those who have bought mortgaged premises from the mortgagers indorse upon the note secured by the mortgage, after its maturity, an agreement to pay ten per cent. interest on it thereafter, it having borne only seven before, the agreement is only a personal undertaking, not secured by the mortgage even as against the promisors, and much less as against a subsequent purchaser of the lands, who had not assented to the agreement: *Spear v. Hadden*, 31 M. 265.

185. A note secured by mortgage was indorsed with an agreement to pay a higher rate of interest. *Held*, that the indorsement was a mere personal agreement and did not enlarge the mortgage: *Havens v. Jones*, 45 M. 253.

186. A written agreement between a subsequent purchaser and the mortgagee for the payment of an increased rate of interest after due, in consideration of an extension of time, was *held* to charge the land where there were no third parties having intervening rights: *Smith v. Graham*, 34 M. 503.

187. A mortgagee has a right to stipulate for ten per cent. interest as a condition to extending time of payment, and if paid and applied as interest, the application will not be disturbed: *Havens v. Jones*, 45 M. 253.

(i) *Power of sale.*

As to foreclosures under, see *infra*, XI.

188. The authority to sell is a special power and must be strictly pursued: *Niles v. Ransford*, 1 M. 338.

189. A power of sale is no necessary part of a mortgage, and a defect in it does not affect the validity of the mortgage: *State Bank v. Chapelle*, 40 M. 447.

190. The omission of the power of sale from a mortgage merely limits the mode of foreclosure to that by bill in equity, and does not show the instrument to be a conveyance: *Cowles v. Marble*, 37 M. 158.

191. Where the power of sale in a mortgage contains a palpable clerical error in the recital of the sum due, the mortgagee may, after default, disregard it, and foreclose for the sum actually due: *Damon v. Deeves*, 62 M. 465.

192. A statutory authority to mortgage is to be understood as authorizing the ordinary power of sale to be inserted in the mortgage: *Joy v. Jackson, etc. Co.*, 11 M. 155.

193. Under the statute of April 19, 1883, the power of sale continued in force as a personal power, until completed by deed, in the person who acted when the property was struck off, passing, in case of his death, to his personal representatives, and not to any official successor: *Hoffman v. Harrington*, 33 M. 392.

III. PRIORITY OF LIEN.

See NOTICE; RECORDING ACTS.

194. Where two mortgages on the same property have the same date, the fact that the one recorded last was acknowledged first does not show that it was meant to be the first security: *Van Aken v. Gleason*, 34 M. 477.

195. Where a mortgager testifies in general terms that he gave the mortgage at a specified time, and is not questioned as to the particulars of delivery, this testimony must be regarded as showing *delivery* at that time: *Matteson v. Blackmer*, 46 M. 393.

196. The fact that the value of land is not enough to secure two loans is significant, but not conclusive, evidence that the second mortgagee had no notice of the prior lien: *Ibid*.

197. A complainant in foreclosure desired to show that the mortgage held by him was delivered and recorded before another one of previous date held by a person who had died before the suit was begun; and he sought to show it by the testimony of a witness who claimed the decedent had told him his mortgage was neither acknowledged nor delivered until the other was put on record. The witness had lived five or six miles from decedent, and was not shown to have been his confidant. Complainant had a mortgage on the lands of the witness. *Held*, a suspicious circumstance that he had never mentioned his conversation with decedent in the latter's lifetime, nor until after complainant's suit had been pending seven years, and until complainant had called upon him, just before he was sworn, to know if he was possessed of valuable information: *Ibid*.

198. A mortgage was taken which, by mistake, omitted certain property it was intended to cover. A third person authorized to procure its correction secured for himself a mortgage upon the whole, and offered the original mortgagees an interest in this mortgage to the amount of the former one. The offer was declined. *Held*, that the original

mortgage remained in force and was prior to the other, and a decree was made rectifying and foreclosing it: *Hunt v. Hunt*, 88 M. 161.

199. One who takes a second mortgage, having had sufficient notice of a misdescription in the first to put him on inquiry, cannot claim priority as to a tract that was designed to be embraced in the first: *Michigan Mut. Ins. Co. v. Conant*, 40 M. 530.

200. A vendee of land gave to the vendor a purchase-money mortgage before delivery of the deed to him, and afterwards, at the time the deed was actually delivered, he mortgaged the premises to a third person in whose presence the delivery was made and who had no notice of the prior mortgage. *Held*, that the second mortgagee was entitled to priority: *Heffron v. Flanigan*, 37 M. 274.

201. The parties to a mortgage agreed that a new one should be substituted with a clear title. Upon the same day on which this was done, and without the knowledge of the mortgagees, another mortgage was given to the mortgager's father-in-law, who had advanced considerable money to the mortgager's wife without asking repayment. The testimony indicated that the mortgage was made to him without his participation, and with the fraudulent purpose of giving it priority. *Held*, that it must be postponed to the other mortgage, since even if he were an honest mortgagee, his mortgage, if made first, was on premises already encumbered, and he had no equities which would make it anything but a second mortgage; and if the original mortgage was exchanged under a false pretence that the title was to be cleared, he was in no position to object to the restoration of the old security in behalf of the original mortgagees: *Eggeman v. Harrow*, 37 M. 436.

202. A claim of priority set up by a foreclosure defendant in behalf of a mortgage on the same premises and of the same date with the one in suit, but not recorded until two days later, was *held* not to be sustained by the proofs: *Clark v. Johnson*, 32 M. 263.

203. Where one mortgage was substituted for another, and by a corrupt arrangement with the mortgager, a third person, knowing the facts, procured and took advantage of an interval between the discharge of the original mortgage and the recording of the substitute to record a mortgage which he obtained meanwhile for himself, and did this with the fraudulent purpose of securing priority, his mortgage was postponed to the other: *Waldo v. Richmond*, 40 M. 380.

204. The grantee of a mortgager quitclaimed to him in satisfaction of his foreclosure decree, and the mortgager then recorded a later mortgage from the grantee to himself before the quitclaim deed could be recorded. *Held*, that the later mortgage should be set aside and the quitclaim deed permitted to stand by reason of the fraud: *Corey v. Alderman*, 46 M. 540.

205. Where there were two mortgages of an equitable title to lands, that which was prior in time was allowed to prevail; nor would a subsequent obtaining of the legal title in right of another and not in one's own right, or with knowledge of the prior mortgage, aid the holder of the other: *Wing v. McDowell*, W. 175.

206. Whether the prior mortgagee of an executory land contract, whose mortgage was given to secure an antecedent debt, has rights paramount to those of a subsequent mortgagee under a mortgage after the acquisition of the legal title by the mortgager, *quere*; the court being equally divided: *Edwards v. McKernan*, 55 M. 520.

207. A corporation executed a trust mortgage to secure bonds for \$12,000 or such part thereof as it should borrow, and bonds were issued for about \$6,500 borrowed. To a foreclosure of said mortgage parties to whom a second mortgage on the same property had been given to secure them from liability as indorsers of the corporation's note for \$10,000 were made parties as subsequent encumbrancers, and pending foreclosure a bond for \$5,500 was delivered to them. *Held*, upon a cross-bill filed by such indorsers, that the corporation officers had no power to issue this bond of which the effect was to lessen the security of the original bondholders, to secure indorsers upon a note not intended to be secured by bonds when given; and that the lien of such indorsers was subordinate to that of the original bondholders: *Woodin v. Sparta Furniture Co.*, 59 M. 58.

208. A mortgage given to secure corporate bonds which as the mortgagee knew had never been sold, but were turned over to him without authority as security for the private debts of the company's treasurer, was postponed to a subsequent levy: *McKee v. Grand Rapids & R. L. Street R. Co.*, 41 M. 274.

209. Anything done by a first mortgagee to the prejudice of a second, with a knowledge of the second mortgage, should, to the extent of such injury, postpone the first to the second mortgage: *Bailey v. Gould*, W. 478; *James v. Brown*, 11 M. 25.

IV. RIGHTS, INTERESTS AND LIABILITIES OF MORTGAGERS.

As to right of subrogation, see *infra*, VIII.

210. The constructive possession of vacant land as between the mortgager and mortgagee must be deemed to be in the mortgager: *Albright v. Cobb*, 84 M. 316.

211. Where one when he gave a mortgage was in possession under color of title, he is presumed, in the absence of anything to the contrary, to be owner of the inheritance: *Wyman v. Baer*, 46 M. 418.

212. The mortgager now having a legal right to possession until the mortgage is foreclosed may make any arrangement for the use and enjoyment that any person might during his term: *Crippen v. Morrison*, 13 M. 23.

213. A mortgager of land is entitled to possession until foreclosure, and does not forfeit this right by failure to make payments as stipulated: *Ferris v. Wilcox*, 51 M. 105.

214. The mortgager, not the mortgagee, is entitled to the rents, issues and profits of the mortgaged premises until foreclosure becomes absolute: *Wagar v. Stone*, 36 M. 364.

215. The mortgager is entitled to recover the possession from his mortgagee at any time before his rights have been foreclosed: *Humphrey v. Hurd*, 29 M. 44.

216. A mortgager whose personal liability for the mortgage debt has become extinguished is not disabled legally from obtaining title in good faith under the foreclosure of another mortgage which has legal priority. And where no fraud or collusion appeared, although charged, a bill to subject such foreclosure purchase to the subsequent mortgage was properly dismissed: *Burdick v. Wheelock*, 48 M. 289.

217. One who gives a purchase-money mortgage that includes lands not granted to him is not estopped as against the grantors and mortgagees from denying that it covers those lands if he acquire them afterwards: *Brown v. Phillips*, 40 M. 264.

218. How far the rule that a mortgager holding by warranty deed and not ousted or disturbed cannot set up an outstanding title by way of defence to a foreclosure should be applied, *querre*: *Powell v. Conant*, 33 M. 396.

219. One who has given a mortgage to be sold for a fraudulent purpose cannot set up the fraud as a defence to the mortgage in the hands of a *bona fide* purchaser: *Bloomer v. Henderson*, 8 M. 395.

220. As between the mortgager and first and second mortgagees, the duty of paying taxes is primarily upon the mortgager, and he

cannot cut off their rights by acquiring tax-titles: *Connecticut Mut. L. Ins. Co. v. Bulle*, 45 M. 113.

221. Where a mortgage is expressly made subject to prior mortgages their validity cannot be denied by the mortgager or his assignee in bankruptcy: *Jerome v. McCarter*, 94 U. S. 734.

222. If two men give a mortgage for money borrowed by both, and one pays it, he is entitled to recover one-half the amount of the other, and the defendant is not entitled to reduce the recovery by showing that the money was in fact borrowed for the benefit of a partnership composed of themselves and a third person: *Goodrich v. Leland*, 18 M. 110.

When mortgagee may claim benefit of insurance paid to mortgagee, see INSURANCE, §§ 101, 102.

V. RIGHTS, ETC., OF MORTGAGEES.

223. The mortgagee's interest in the lands is not subject to attachment: *Columbia Bank v. Jacobs*, 10 M. 349.

224. The legal title to mortgaged land was, at the common law, in the mortgagee, who was entitled to possession, and who might, at any time after default, if not before, unless the mortgage should otherwise provide, put the mortgager out by ejectment: *Stevens v. Brown*, W. 41; *Mundy v. Monroe*, 1 M. 68; *Hoffman v. Harrington*, 33 M. 392; *Albright v. Cobb*, 84 M. 316.

As to nature of the interest now taken by the mortgagee, see *supra*, § 1.

225. If a mortgagee has entered into possession as purchaser under defective foreclosure proceedings, the validity of his mortgage is not affected, and he can claim all the rights of a mortgagee in possession under his mortgage: *Todd v. Davis*, 33 M. 160; *Morse v. Byam*, 55 M. 594.

226. The mortgagee at the common law was entitled to the possession of the land mortgaged, and the court of chancery would not prevent him from taking possession, or, if he was in possession, deprive him of it, so long as there was anything due on the mortgage: *Schwartz v. Sears*, W. 170.

227. By the operation of the statute of March 8, 1843, forbidding ejectment by mortgagees (H. S. § 7847), they are not entitled to possession until after foreclosure (but said statute was inoperative as to prior mortgages: see EJECTMENT, §§ 42, 43): *Baker v. Pierson*, 5 M. 456; *Caruthers v. Humphrey*, 13 M. 270; *Newton v. Sly*, 15 M. 391; *Hogsett v. Ellis*, 17 M. 351; *Newton v. McKay*, 30 M. 380;

Wagar v. Stone, 36 M. 364; *Lee v. Clary*, 88 M. 228; *Hazeltine v. Granger*, 44 M. 508; *Morse v. Byam*, 55 M. 594.

228. But this is a provision for the benefit of mortgagers, and they are not obliged to insist upon it. If in mortgaging their lands they give a deed that is in form absolute, they thereby convey the right to possession: *Bennett v. Robinson*, 27 M. 26, 30; *Jeffery v. Hursh*, 42 M. 563; *Morse v. Byam*, 55 M. 594.

229. Though a deed, absolute in form, but intended as a security, will leave in the grantor the right of a mortgager to redeem, it does not follow that he would be entitled to maintain possession until foreclosure under H. S. § 7847: *Wetherbee v. Green*, 22 M. 311.

That the grantee in a deed absolute in form may bring ejectment, see EJECTMENT, § 49.

230. Where a mortgagee is deliberately and intentionally put in possession by the mortgager, his possession is rightful, and ejectment cannot be brought against him without some action previously taken which will terminate his right and render his continuance in occupancy wrongful: *Reading v. Waterman*, 46 M. 107.

231. A mortgagee put into possession before foreclosure by the mortgager's consent has at least a tenancy at will which cannot be destroyed without notice: *Byers v. Byers*, 65 M. 598 (April 28, '87).

232. And consent to the mortgagee's taking possession, which would be good until revoked, might be given without any writing, and as informally as possible: *Morse v. Byam*, 55 M. 594.

233. The mortgager's assent to the possession of the foreclosure purchaser should be presumed if much time has passed without any question as to the validity of the foreclosure; and such assent would entitle the purchaser to hold as mortgagee, if not as owner, except as against proceedings to redeem: *Sinclair v. Learned*, 51 M. 335.

234. A deed absolute given by way of security conveys no right of possession, if the papers show that the relation between the parties thereto is that of mortgager and mortgagee, and that the mortgager is left in possession under an arrangement which amounts to a defeasance of the deed: *Ferris v. Wilcox*, 51 M. 105.

235. When a mortgager's administrator has parted with the title to the premises, his permission to the mortgagee to take possession of them is of no more force than if given by a stranger: *Newton v. McKay*, 80 M. 380.

236. Where the mortgagee has been in possession of the mortgaged premises, and the

mortgager comes with his money to redeem, the mortgagee must account for the profits of the mortgaged premises, of which the crops he may have appropriated or destroyed will be considered a part: *Stevens v. Brown*, W. 41.

237. If a creditor, who has taken a deed absolute as security, conveys the land to a bona fide purchaser, he must account to the debtor for its value at the time of the sale, whether he received that amount or not: *Enos v. Sutherland*, 11 M. 538.

238. The grantees in possession under a deed absolute in form, but given by way of security merely, do not stand exactly in the same position in reference to an accounting for the rents and profits as ordinary mortgagees who have taken possession by way of enforcing their security; they are agents of the grantors as well as mortgagees, and are chargeable for any failure to obtain full rental value for the premises only on the same grounds as an agent thus put in possession: *Barnard v. Jennison*, 27 M. 230.

239. A mortgagee without notice is not affected by the fact that the land was conveyed to his mortgager upon the latter's agreement to pay the grantor's debts: *Farland v. Caton*, 69 M. 235 (April 6, '88).

240. Where a mortgage had been destroyed without recording, and the mortgager's son, to whom he had conveyed the land, gave a new mortgage in exchange for the note to which the old one was collateral, held, that in a suit to foreclose the latter mortgage the complainant could not question the validity of the conveyance to defendant from his father, since, having parted with his prior unrecorded lien, said complainant must stand upon the new mortgage received in its stead; whatever defeats the mortgager's title defeats the mortgage lien: *Sloan v. Holcomb*, 29 M. 153.

241. The English doctrine of tacking is not recognized in Michigan: *Wing v. McDowell*, W. 175; *Ladue v. Detroit & M. R. Co.*, 18 M. 380.

242. An insurance policy taken out by the mortgager, in which the insurance is stated to be for the benefit of the mortgagee, creates no contract relation between the latter and the insurer, and whatever defeats the mortgager's right of recovery defeats any right of the mortgagee: *Van Buren v. St. Joseph C. V. F. Ins. Co.*, 28 M. 398.

When may sue on policy, see INSURANCE, §§ 54, 288-292.

243. A mortgagee of land cannot avail himself of an agreement made with a third party by a mere owner of the equity of redemption to pay the mortgage, where such

owner was not a party to the mortgage nor in any way liable for the debt secured by it: *Stuart v. Worden*, 42 M. 154.

244. A mortgagee owes no duty to the mortgager or to a subsequent mortgagee to protect the land from tax-sales: *Connecticut Mut. L. Ins. Co. v. Bulte*, 45 M. 118.

245. A mortgagee can protect his mortgage interest against taxes that the mortgager should have paid, and the amount he pays in doing so may be added to the charge upon the land: *Payne v. Avery*, 21 M. 524; *Vaughn v. Nims*, 36 M. 297; *Connecticut Mut. L. Ins. Co. v. Bulte*, 45 M. 118.

246. On foreclosure for non-payment of taxes as they fell due the mortgagee claimed to recover, as taxes paid by himself, certain sums paid by his agent in bidding in the property at tax-sales. *Held*, that such payments were not, in contemplation of law, payments of the taxes, and could not be included in the decree: *Maxfield v. Willey*, 46 M. 252.

247. If, before foreclosure, a mortgagee pays taxes and insurance which the mortgager ought to have paid, the sum paid may be included in the amount for which he forecloses, even though the insurance was taken for the full period allowed for redemption; but for such payments made after foreclosure sale the power of sale cannot again be asserted: *Walton v. Hollywood*, 47 M. 885.

248. If a mortgagee accepts a mortgage on lands already subject to returned taxes, the mortgage being silent as to taxes, and redeems soon after the tax-sale without giving the mortgager an opportunity to do so instead, he cannot claim that his redemption certificate is a lien on the land as against a subsequent purchaser who has paid the mortgage in full without notice of the claim of lien: *Pond v. Drake*, 50 M. 302.

249. Money paid by the holder of a mortgage to redeem the premises from a tax-sale does not constitute a lien apart from the mortgage, but is discharged when the mortgage is satisfied; and whether the amount paid is or is not included in the sum for which the mortgage is foreclosed, there can be no subsequent or separate proceeding against the mortgager to enforce its payment: *Vincent v. Moore*, 51 M. 618.

250. Where a mortgagee has acquired a tax-title to protect the mortgage, a foreclosure decree may provide for the payment to him of the cost thereof on condition that he assign the certificate of purchase to the mortgager: *Baker v. Clark*, 52 M. 22.

251. Where a covenant to insure is not kept by the mortgager, the mortgagee may in-

sure, and can add the premium, if fair and reasonable, to his debt: *Leland v. Colver*, 84 M. 418.

252. One who indemnifies a mortgagee against a tax-title cannot afterwards set up the tax-title against his title as purchaser on foreclosure: *Wyman v. Baer*, 46 M. 418.

253. Where a mortgagee brings trespass for the removal of a building from the mortgaged land, counting upon the foreclosure and sale of the mortgaged premises, and the existence of a deficit thereunder, to satisfy the debt, he cannot recover unless he shows a deficiency upon a regular and legal foreclosure and sale: *Taylor v. McConnell*, 53 M. 587.

254. Where, after foreclosure, the mortgager's title turns out to have been invalid, and he, taking advantage of a curative act, obtains a confirmatory patent from the state, the mortgagee may have his lien reinstated in equity: *Toms v. Boyes*, 50 M. 852.

255. Where a paid-up lease for a certain period was given to mortgagees as additional security, who had the option to hold over on paying a fair rental, *held*, that whether or not they gave up possession at the date fixed, their mortgage security remained and they could enforce it if the debt was not duly paid; and that the mortgager could pay the debt at any time after it became due and so extinguish the security: *Dutton v. Merritt*, 41 M. 587.

256. And the foreclosure of the mortgage would not prevent the mortgagees from resorting to any additional security they might have, and they would have a right to apply the amount of rent due from them and unpaid in satisfaction of their debt: *Storey v. Dutton*, 46 M. 539.

257. A mortgagee compelled after foreclosure to redeem from taxes that had become a lien on the lands through the tax collector's false return *nulla bona* has an action against the latter: *Raynsford v. Phelps*, 43 M. 842.

258. But not if the tax itself was void: *Raynsford v. Phelps*, 49 M. 815.

259. Payment of taxes by the mortgagee of land does not necessarily give him a right of action against the mortgager as for money paid to his use: *Raynsford v. Phelps*, 43 M. 842.

VI. RIGHTS, ETC., OF SUBSEQUENT PURCHASERS OR ENCUMBRANCERS; ASSUMPTION OF MORTGAGE; MARSHALLING SECURITIES.

(a) *In general.*

Measure of damages to purchaser for breach of covenant to pay mortgage, see CONVEYANCES, § 367.

260. Subsequent grantees or encumbrancers of mortgaged premises have a right to rely upon the record as determining the amount of the mortgagee's claim, and they are not charged with notice of the conditions of the bond to which the mortgage is collateral, but which are not expressed in the mortgage: *Payne v. Avery*, 21 M. 524.

261. Title obtained by foreclosure will ensure to the benefit of the purchaser's grantee by estoppel under his warranty: *Lee v. Clary*, 38 M. 223.

262. One who has sold mortgaged land with warranty and has covenanted to pay off the mortgage cannot make title in himself as against his grantee by allowing foreclosure and redeeming the land: *Huxley v. Rice*, 40 M. 78.

263. Where both parties to a conveyance of land that is mortgaged suppose that a title in fee is being transferred, though in fact it is not, and the grantor afterwards purchases the land at the foreclosure sale, he is bound in equity to recognize the grantee's right to a perfected title. And if he further becomes a party to an arrangement whereby a third person takes a deed from the grantee and gives back a mortgage that he, the grantor, disposes of for his own purposes, he is then estopped from disputing that his original deed conveyed title and that his foreclosure purchase related back to it: *La Cosa v. Wadsworth*, 56 M. 421.

264. A subsequent purchaser cannot maintain a bill to cancel a mortgage on the premises on the ground that the mortgager and mortgagee agreed to an extension, and that by delay in foreclosing the value of the mortgaged property has been diminished and the mortgager has become insolvent. Such a purchaser is not a mere surety: *Case v. O'Brien*, 66 M. 289 (June 9, '87).

265. One who purchases a parcel of land subject to a mortgage upon that and other property, and with full record notice of a conveyance of the other property, gets no greater rights by virtue of such purchase than his grantor had; and in a suit for the foreclosure of the prior mortgage, and to marshal the securities, he is not in a position to attack such deed for want of consideration: *Cooper v. Bigly*, 13 M. 463.

266. The vendee of an equity of redemption stands in the place of the mortgager, and holds the property subject to all encumbrances; and where there were two mortgages, and the mortgaged premises had been sold on foreclosure at law of the first mortgage, it was held that the vendee of the equity of redemption could not, by paying the redemption

money, and taking an assignment from the purchaser of all his interest in the land, claim the rights of such purchaser for the purpose of defeating the second mortgage: *Johnson v. Johnson*, W. 381.

267. The purchaser of an equity of redemption who has gone into possession under his purchase is estopped, when proceedings are taken to foreclose the mortgage, from denying the title of the mortgager: *Wanzer v. Blanchard*, 8 M. 11.

268. One who buys land and receives a conveyance subject to a mortgage thereon cannot afterwards contest the validity of the mortgage on the ground of defect in the formalities of execution: *Disbrow v. Jones*, H. 48.

269. One who has bought lands subject to a mortgage, and has subsequently expressly recognized it by an agreement with the mortgagee for forbearance, cannot thereafter dispute its existence or validity: *Smith v. Graham*, 84 M. 302.

270. A second mortgagee takes subject to a prior unrecorded mortgage expressly referred to in, and excepted from, the deed to his mortgager: *Baker v. Mather*, 25 M. 51.

271. A second mortgagee can take up the first mortgage, tack it to his own and foreclose for both: *Manwaring v. Powell*, 40 M. 371.

272. The maker and indorser of a note secured by a mortgage are not released from their obligation to pay it by the fact that it has been taken up by the holder of a second mortgage with whom they had no relations. Payment of a first mortgage by a second mortgagee makes him in equity an assignee of such first mortgage, and he may resort to all suitable remedies to enforce payment: *Mattison v. Marks*, 31 M. 421.

273. A second mortgagee who has foreclosed and bid in the property succeeds to the mortgager's rights and can make any defence against the other mortgagee that the mortgager could have made: *Thompson v. Jarvia*, 39 M. 689.

274. Where a subsequent mortgagee pays the redemption money of the mortgaged premises to the purchaser under the foreclosure of a prior mortgage, he does not succeed to the rights of such purchaser, but stands in the place of the prior mortgagee; the only additional right which he acquires being the right to be reimbursed what he has paid, with interest, on foreclosing his own mortgage: *Johnson v. Johnson*, W. 331.

275. Where the holder of a mortgage released a note that was given with it, reserving at the same time his right to foreclose the

mortgage on the land, and a second mortgagee, with notice of the first mortgage, had, prior to the release, foreclosed his own mortgage at law, and purchased the premises, the latter was held to stand in the place of a purchaser of the equity of redemption, subject to the first mortgage, and the premises in his hands, as such purchaser with notice, to be the primary fund for the payment of the first mortgage: *Bailey v. Gould*, W. 478.

276. Where a decree in a foreclosure suit is opened to let in a defence, on petition of a defendant, after a sale has been made to complainant under the decree, no one will be bound by the proceedings on such petition except parties to it, and those who have subsequently acquired interests under them. A purchaser under the defendant before the decree was opened would not be affected by such proceedings unless made a party to them and allowed an opportunity to be heard: *Stone v. Welling*, 14 M. 514.

277. The owner of premises twice mortgaged conveyed them subject to the mortgages after the first had been foreclosed. Before the time of redemption had expired the grantee redeemed, and, having obtained a quitclaim to his wife from the first mortgagee, claimed that she held in her own right under a foreclosure from which the property had not been redeemed, and that the second mortgage was cut off. Held, that as her name was only used as a cover where her husband was the real party in interest, and as the transaction was probably understood by the mortgagee as substantially a redemption, no equity was made out in the wife's favor: *Wright v. Patterson*, 45 M. 261.

278. Where one having a second mortgage allows the land to be sold for taxes and obtains a tax-deed, he cannot use it adversely to the first mortgage: *Horton v. Ingersoll*, 18 M. 409.

279. A second mortgagee who has foreclosed and bidden in the premises can obtain a tax-title to them, and if it is allowed to become absolute he has a right to use it as a defence to an action of ejectment brought by the first mortgagee, unless the latter tenders repayment: *Conn. Mutual Life Ins. Co. v. Bulte*, 45 M. 118.

280. A second mortgagee is under no obligation to protect the lien of the first mortgagee by the payment of taxes or by purchasing the premises for his benefit at a tax-sale; but if he does pay or purchase, the act *ipso facto* constitutes a protection: *Ibid*.

(b) Assumption of mortgage.

281. The purchaser of lands who has covenanted as part of the purchase price to pay a

mortgage given by his grantor cannot avoid his liability by showing that the mortgage was not enforceable against such grantor by reason of a personal disability to execute a valid and binding mortgage: *Comstock v. Smith*, 26 M. 306.

282. Nor can he resist the mortgage by showing that it was without consideration, or that by reason of a mistake in the description he acquired no legal title, where he obtained possession under his deed of the proper premises, and the right to have the mistake corrected: *Crawford v. Edwards*, 83 M. 854.

283. Where a grantee has assumed a mortgage made by the grantor, and the amount thereof has been deducted from the purchase price, he cannot dispute the legal execution of the mortgage or its amount as specified in the deed; and after he has paid interest on the mortgage for eighteen months without complaint he cannot be heard to complain that the clause subjecting his deed to the mortgage was fraudulently inserted: *Miller v. Thompson*, 84 M. 10.

284. The acceptance by a grantee of a deed conveying lands subject to a specified mortgage, and providing that he shall assume and pay the mortgage, binds him, and the provision inures to the benefit of the mortgagee, who may enforce it in equity: *Crawford v. Edwards*, 83 M. 854; *Miller v. Thompson*, 84 M. 10; *Taylor v. Whitmore*, 85 M. 97; *Carley v. Fox*, 88 M. 887; *Unger v. Smith*, 44 M. 22.

285. Where a purchaser buys mortgaged premises from the mortgagor subject to the mortgage and agreeing to pay it as part of the purchase price, and his deed is expressly made subject to it, though it does not in terms bind him to pay it, he is to be treated, as between himself and the mortgagor, as having assumed the mortgage, and is personally liable for whatever deficiency there may be after foreclosure sale: *Canfield v. Shear*, 49 M. 818.

286. Whether on mortgage foreclosure a personal liability can be enforced against one who is not a party to the mortgage but has bought the land subject thereto, and without making anything more than a parol agreement with the grantor to pay it, *quere*: *Gage v. Jenkinson*, 58 M. 169.

287. A grantee purchasing mortgaged premises subject to the encumbrance does not become personally responsible for the debt, and only loses the premises in case of foreclosure; but a grantee who assumes the encumbrance is presumably responsible for the debt: *Winans v. Wilkie*, 41 M. 284.

288. One who has only purchased mortgaged land subject to the encumbrance is not

personally liable, though, if he has promised to pay the mortgage, he may be made a defendant in foreclosure if he can be found in the jurisdiction, and a decree may be rendered against him for any deficiency after sale: *Booth v. Connecticut Mut. Life Ins. Co.*, 48 M. 299.

289. A deed containing a covenant of warranty "against all lawful claims whatsoever subject to a certain mortgage given by the parties of the first part for one thousand dollars" merely leaves the title subject to be defeated by a failure to pay the mortgage debt, but does not bind the grantee to pay it. And the exception is not such a written contract as will exclude evidence to show that, in addition to the consideration expressed, the grantee had also agreed to pay off the mortgage. The exception and the agreement are distinct: *Strohauer v. Voltz*, 42 M. 444.

290. Where it is doubtful whether a deed of mortgaged premises binds the grantee to pay existing encumbrances, evidence of the value of the premises or of the agreed consideration for them, and as to whether the grantee retained any of the consideration to pay the debt, is admissible to aid in construing the deed: *Winans v. Wilkie*, 41 M. 264.

291. One who takes a deed of mortgaged land will be personally liable on the foreclosure of the mortgage if his deed expressly binds him to pay it; but a covenant to do so cannot be implied by either deed or mortgage: *Gage v. Jenkinson*, 58 M. 169.

292. Where a grantee of land agreed to pay a mortgage on it, but did not do so, and the land was sold for less than the mortgage debt, the fact that the foreclosure decree does not show how much was due as principal and how much as interest is immaterial in an action against the grantee for damages resulting from his failure to pay the debt. He is liable for what he agreed to pay and no more, and evidence of the foreclosure is only important as showing that the land, which was a fund in his hands from which the mortgage might have been paid, had been exhausted without satisfying the debt: *Strohauer v. Voltz*, 42 M. 444.

As to personal decrees for deficiency, see *infra*, X, (i), 2.

That sureties on chancery appeal bond are not liable thereon for deficiency, see APPEAL, § 182.

(c) *Marshalling securities.*

293. The rule of marshalling assets must be applied so as to protect and not destroy equities: *Southworth v. Parker*, 41 M. 198.

294. The doctrine of marshalling assets must not be applied to the mortgagee's injury; its purpose is to protect as far as possible later interests: *Detroit Savings Bank v. Truesdail*, 88 M. 430.

295. Where two persons have a lien on the same piece of property, which is not sufficient to satisfy both, and one of them has a lien for his debt on another piece of property, he must exhaust the latter before resorting to the common fund: *Troubridge v. Harleston*, W. 185; *Cooper v. Bigly*, 18 M. 463; *Southworth v. Parker*, 41 M. 198.

296. But the foregoing maxim is not universally applicable, and it can seldom be just where, instead of a common debtor, there are two or more whose interests in the funds are different: *Southworth v. Parker*, 41 M. 198.

297. It will not enable a third mortgagee of part of premises covered by the first mortgage to compel the first mortgagee to sell first a parcel on which he also holds a second encumbrance, which is not included in the third: *Slater v. Breeze*, 86 M. 77.

298. As a general rule, where mortgaged lands are alienated or encumbered in parcels, the parcels are to be charged for the satisfaction of the mortgage in the inverse order of alienation or encumbrance: *Cooper v. Bigly*, 18 M. 463; *Ireland v. Woolman*, 15 M. 258; *McKinney v. Miller*, 19 M. 142; *Sibley v. Baker*, 28 M. 812; *Sager v. Tupper*, 35 M. 184; *McVeigh v. Sherwood*, 47 M. 545.

299. Subsequent purchasers or encumbrancers take subject to any explicit provisions of a mortgage as to the order in which the property shall be sold, and that without reference to the considerations on which such preferences were agreed on: *Mickle v. Maxwell*, 42 M. 305.

300. On the foreclosure of a first mortgage conveying three parcels of land, on the first and second of which a second mortgage, and on the second and third of which a third mortgage, has been given—the second mortgage having been before foreclosed, and both the first and second parcels sold subject to the first mortgage, the second parcel being, at the instance of the third mortgagee, sold last—the third mortgagee has no right to demand that the parcel not covered by his mortgage (the first parcel) shall be sold first. The purchaser under, the prior foreclosure, of the first and second parcels, has a right to insist that the third parcel shall be first sold. Where the purchaser under said prior foreclosure sale purchased subject to the first mortgage, but with an agreement with the complainant, who then owned both the first and second

mortgages, that when the first mortgage was foreclosed said third parcel should be first sold, his right to have the sale on such foreclosure made according to this agreement, which is the order of sale established by law in the absence of any agreement, would not be affected thereby: *Sibley v. Baker*, 23 M. 312.

301. The grantee of a parcel of mortgaged land is entitled to have the rest of the land sold to satisfy the mortgage before resort is had to his: *Mason v. Payne*, W. 459; *Gantz v. Toles*, 40 M. 725.

302. But where a part of mortgaged premises is conveyed by the mortgager subject to the payment of the whole of the mortgage, that part becomes the preliminary fund for its satisfaction, and the land retained by the mortgager becomes the secondary fund: *Mason v. Payne*, W. 459; *Berry v. Whitney*, 40 M. 65, 72; *Michigan State Ins. Co. v. Soule*, 51 M. 312.

303. Where A. had a mortgage upon lots one, two and three, and B. had a subsequent mortgage upon lot three, and they, having no knowledge of conveyances which had been made of lots one and two subsequently to their mortgages, conjointly released a part of lot three, it was held that B.'s equitable right to have lots one and two first sold was not thereby affected: *Cooper v. Bigly*, 13 M. 463.

304. A second mortgagee cannot insist that on the foreclosure of a prior mortgage resort shall first be had to a parcel of land not covered by his mortgage, and which the mortgager had aliened after the first but before the second mortgage; such land is not to be sold until after that covered by the second mortgage: *Sager v. Tupper*, 35 M. 134.

305. A junior mortgagee cannot claim that a homestead covered by the first mortgage but not by his own shall be first sold by the prior mortgagee: *Armitage v. Toll*, 64 M. 412.

306. The statement in a deed from an intermediate holder of mortgaged premises that the grant is subject to the mortgage does not, in the absence of language expressing or implying an assumption by the grantee of such mortgage, or an intention that the interest granted should be charged with the whole amount of the mortgage, make the mortgage a specific charge upon such interest so as to influence the equities between second and third mortgagees as to other portions of the premises: *Slater v. Breese*, 36 M. 77.

307. C. gave F. a warranty deed of a farm subject to payment by F. of a certain mortgage. Another mortgage given to secure a debt of C.'s covered the farm and some of

Mrs. C.'s property, and this mortgage was not excepted from the warranty. Upon the foreclosure of the last mentioned mortgage, Mrs. C.'s property was bid off first and bought in by F. Held, that as to her own lands she was entitled to the rights of a surety, and could insist that the farm be sold first; that her release of dower rights in the farm gave her the right to insist that F. protect her by paying off the mortgage first named; and that as between herself and him the foreclosure sale was wrongful, and F. acquired no rights by it except the right to the mortgage: *Carley v. Fox*, 38 M. 337.

308. A third encumbrancer who concedes the existence of a second encumbrance is not of right entitled to introduce proofs to show that the amount of the second encumbrance is less than it is represented to be, where the question is as to the order of sale on foreclosure of the first mortgage, as between the parcel covered by the third and that covered by the second encumbrance: *Slater v. Breese*, 36 M. 77.

Further, as to marshalling assets, see *infra*, X, (j), 2.

VII. ASSIGNMENT.

(a) What constitutes; validity.

309. Mortgages are chattel interests, and may be transferred without writing: *Nims v. Sherman*, 43 M. 45.

310. The acknowledgment of an assignment of a mortgage is no part of the assignment: *Livingston v. Jones*, H. 165.

311. An assignment of a mortgage is not a conveyance of real estate and may be made without executing a deed or other instrument in writing where the statute does not require the transfer to be so made: *Dougherty v. Randall*, 8 M. 581; *Young v. McKee*, 13 M. 552.

312. An assignment of a mortgage, though not witnessed, or with but one witness, is competent proof as well in law as equity to show a transfer of the entire interest of the mortgagee in the mortgage: *Dougherty v. Randall*, 8 M. 581.

313. A mortgagee's rights may be transferred either by a legal or by an equitable assignment or conveyance: *Hoffmann v. Harrington*, 33 M. 392.

314. Anything which transfers the debt (though by parol or mere delivery) transfers the mortgage with it: *Ladue v. Detroit & M. R. Co.*, 13 M. 330.

315. The assignment of a debt secured by a mortgage carries with it the mortgage, as an incident to the debt, although there is no men-

tion made of the mortgage in the assignment: *Cooper v. Ulmann*, W. 251; *Dougherty v. Randall*, 3 M. 581; *Martin v. McReynolds*, 6 M. 70.

316. So the assignment of a part of a debt, or of one of several notes secured by a mortgage, carries with it a proportional interest in the mortgage unless it is otherwise agreed between the parties at the time: *Cooper v. Ulmann*, W. 251.

317. An equitable assignee of a debt secured by mortgage is entitled to have the mortgage follow the debt: *Briggs v. Hannowald*, 35 M. 474.

318. Where it is doubtful whether an assignment of a mortgage is a sale of the security or only a mortgage of it, if the consideration was much less than the amount due upon it, the court will incline to consider it a mortgage: *McKinney v. Miller*, 19 M. 142.

319. A man executed an assignment of a mortgage security held by him in order that he might use it, if necessary, to secure himself and personal creditors in case of the failure of a manufacturing concern in which he was interested; but he never did use it, and he continued to collect money on it as his own, and used the money for his own purposes. *Held*, that this did not show that any effective assignment was intended or made out: *Hutton v. Cuthbert*, 51 M. 229.

320. Where complainant averred that a mortgage had been assigned to him, and the answer was silent on the point, and based the defence solely on the ground of infancy, and there was no evidence of assignment except what was contained in the record of a prior cause, which was put in evidence by consent, wherein the former owner of the mortgage had testified that the mortgage was assigned to complainant; and the objection that the assignment was not proved was taken on appeal from a decree in favor of complainant, it was *held* that complainant was entitled to the most liberal construction of the evidence as to the assignment, and its competency not having been objected to, it was sufficient: *Young v. McKee*, 13 M. 552.

321. The recitation of a previous assignment in the assignment of a mortgage was *held* a virtual admission that the assignor had no right to assign; a recital that the former assignment was to a person named is not evidence of the fact; though the assignor can admit title out of himself, he cannot admit it in any other person: *Van Vleet v. Blackwood*, 88 M. 334.

322. The validity of an assignment of a mortgage is not impaired by a showing, merely, that the assignor's interest was but a

life estate, if it does not also appear that the transfer operated to diminish the bulk of the estate at the death of the life tenant: *Sutphen v. Ellis*, 85 M. 446.

323. A power of attorney to sell and convey lands and to borrow money by mortgage upon lands gives the attorney no authority to assign a mortgage, certainly not to assign to himself: *Post v. Springsted*, 49 M. 90.

324. Where an assignment of a mortgage was procured by threatening the mortgagee, a timid and ignorant man, with a prosecution for slander, it was *held* to be without consideration, and a re-assignment was decreed: *Tate v. Whitney*, H. 145.

(b) *Effect; rights, etc., of assignees.*

Covenant in assignment of mortgage construed: See CONVEYANCES, § 840.

325. An assignment of a mortgage or of the right to a particular payment described therein, may be shown not to be absolute, but to have been designed as a security: *Hill v. Goodrich*, 89 M. 439; *Hylar v. Nolan*, 45 M. 357.

326. Where complainant, a married woman, made an unconditional assignment of a mortgage to defendant, and delivered it to her husband, who delivered it over to defendant, and the latter gave the husband a receipt stating that the mortgage was received of the husband as collateral security for a debt owing by him to defendant, and there was no evidence of any negotiations between complainant and defendant, or of any understanding on her part that the transfer of the mortgage was to be upon any condition, or of any instructions by her in reference to it, it was *held* that the court could not say, from these facts, that the assignment was intended by complainant as security only, and not to be absolutely passed to defendant: *Durfee v. McClury*, 6 M. 223.

Re-assignment compelled in chancery, see EQUITY, § 288.

327. An assignment of a mortgage passes the power of sale: *Niles v. Ransford*, 1 M. 388.

328. The assignment of a mortgage that appoints the assignee attorney, with full authority to have, use and take all lawful ways and means, in his assignor's name or otherwise, for the recovery of the money due thereon, transfers to such assignee all of the assignor's collateral rights, including a claim against a previous assignor to himself, for a breach of the covenant that such previous assignor had lawful authority to transfer: *Briggs v. Hannowald*, 35 M. 474.

329. The assignee of a mortgage takes it subject to all equities existing between the parties to it at the time of the assignment: *Russell v. Waite*, W. 31; *Dutton v. Ives*, 5 M. 515; *Nichols v. Lee*, 10 M. 526; *Bloomer v. Henderson*, 8 M. 395.

330. The assignee of a past-due note and mortgage takes it subject to any perfected equitable rights existing in the mortgager to set off claims against it, even though he has no actual notice of such claims. His position is precisely that of his assignor: *McKenna v. Kirkwood*, 50 M. 544.

331. Where a mortgage has been assigned any equities between the assignee and the mortgager affect the mortgage in the hands of any subsequent assignee: *Nichols v. Lee*, 10 M. 526.

332. Where one pays a mortgage as the agent and with the funds of the mortgager, and instead of having it discharged causes it to be assigned as security for a debt owing by himself, the assignee cannot hold the mortgage as against the mortgager or his heirs: *Ibid.*

333. An assignment of a mortgage to a third person, without notice of a prior mortgage, cannot give the assignee a priority which his assignor did not have: *Wing v. McDowell*, W. 175.

334. Where it is understood between a mortgager and mortgagees that the mortgager shall convey to such person as one of the mortgagees shall designate, an assignment by the other mortgagees will not affect a purchaser who, in good faith, takes conveyance from the mortgager, without notice or knowledge of such assignment; the assignee is subject to the same equities as the assignor, and if the assignor afterwards gives a discharge of the mortgage to the purchaser the latter is entitled to regard it as a regular and valid release thereof: *Goodale v. Patterson*, 51 M. 532.

335. Where a mortgage was given accompanying a negotiable promissory note, and they were assigned before due to a *bona fide* indorsee, held, that he was not affected by any equities existing between the original parties: *Reeves v. Scully*, W. 243; *Dutton v. Ives*, 5 M. 515.

336. It would have been otherwise if a non-negotiable bond had been given instead of the note: *Reeves v. Scully*, W. 243.

337. The assignee of a mortgage is entitled, if he is the real owner, to demand and receive payment on the notes secured by it whether indorsed or not, and the formal assignment, duly recorded and acknowledged, is

the best possible evidence of ownership: *Pease v. Warren*, 29 M. 9.

338. Where a mortgage was given to secure a non-negotiable bond, any subsequent assignee of the mortgage is bound to take notice — and is therefore conclusively presumed to have notice — of every defect in the right of the mortgagee as between the mortgagee and mortgager, and such assignee succeeds only to the mortgagee's rights: *Terry v. Tuttle*, 24 M. 206.

339. The *bona fide* assignee of a mortgage, not charged in the bill with knowledge of the complainant's equities against the assignor in respect to the mortgage, will not be held affected with those equities: *Cicotte v. Gagnier*, 2 M. 381.

340. One to whom a note and mortgage are assigned as collateral security for a prior debt of the mortgagee's is not a *bona fide* holder, and stands in no better situation than the assignor: *Waterbury v. Andrews*, 67 M. 281 (Oct. 20, '87).

341. The assignee does not take the mortgage subject to any equities which any third person may have against the mortgager. Where he has purchased the mortgage in good faith, it is not subject in his hands to any equities between the mortgager and his grantor, growing out of the fraud of the mortgager in procuring the title to the land: *Bloomer v. Henderson*, 8 M. 395.

342. The assignment of a mortgage, without the debt which it is given to secure, carries no beneficial interest in the mortgage to the assignee, who would hold it subject to the will and disposal of the creditor: *Bailey v. Gould*, W. 478.

343. An assignment of the mortgage without the debt is a mere nullity: *Ladue v. Detroit & M. R. Co.*, 13 M. 380.

344. An assignee of a mortgage given to secure the payment of a negotiable note is entitled to the same protection that he would have as assignee of the note without the mortgage: *Helmer v. Krolick*, 36 M. 371.

345. An assignment of a mortgage does not transfer undelivered collateral securities unless the parties so intend and a consideration is paid: *Fletcher v. Carpenter*, 37 M. 413.

346. Non-delivery of the securities with the assignment of a mortgage should put a purchaser upon inquiry as to whether the nominal assignee holds the evidences of title before he deals with him as owner: *Ibid.*

347. Where a mortgagee assigns part of a mortgage debt, or one of several notes secured by a mortgage, the law gives the assignee no priority of payment where there is

no understanding or agreement to that effect; but the assignor may, if he sees fit, give the assignee such priority: *Cooper v. Ulmann*, W. 251.

348. Where the owner of a mortgage on which nothing was to become due for several years assigned the mortgage to secure a debt of his own to an amount less than the mortgage, and the assignment was upon condition that if the assignor could pay his indebtedness to the assignee on or before the first day of May following, then the assignment was to be void, but if not, and the assignee should collect the moneys, he should, after retaining the amount of his debt, interest and charges, pay over the surplus to the assignor, *held*, that the assignor, or those claiming under him, would be entitled to this surplus from the assignee or any person claiming through him, at whatever period in the future it might be collected: *Graydon v. Church*, 7 M. 36.

349. And where a subsequent assignee of the mortgage took a deed of the mortgaged premises from the original mortgager to himself, this deed had the effect to foreclose the mortgage as to the mortgager so deeding; the land now represented the mortgage, and the mortgager of the mortgage, or one claiming under him, might file his bill in chancery and have decree that the amount of the mortgage, less the sum it was assigned to secure, be paid to him, and in default thereof the premises be sold to satisfy, first the sum the mortgage was assigned to secure, and next to pay him the amount of the mortgage less such sum: *Ibid*.

350. Such bill being filed, and it appearing that possession had been taken under such deed, and complainant having been remiss in asserting his rights, whereby he might have induced defendants to treat the property as their own, discharged of the lien of the mortgage, he was *held* not entitled to an account of the rents and profits of the premises as against defendants: *Ibid*.

351. Where the assignee of certain notes secured by mortgage is induced to postpone foreclosure by representations made by an assignee of other notes maturing earlier and also secured by the mortgage, he does not become entitled to any advantages over the latter, if at all, if he has not been damaged by relying on his statements: *Burhans v. Mitchell*, 42 M. 417.

352. The cost to which the assignee of a second mortgage is put to redeem from the foreclosure of the first is a necessary outlay in aid of the assigned security, and the assignee is entitled to hold the assignment as security for it, but not to make it a personal charge

against the assignor: *Wendell v. Highstone*, 52 M. 552.

353. Until actual or constructive notice of assignment, the mortgager is entitled to deal with the mortgagee or his personal representative on the supposition that no transfer has been made (unless the mortgage was given to secure negotiable paper and was transferred before due), and the assignee will be bound by such dealings: *Jones v. Smith*, 23 M. 360.

354. H. S. § 5687, providing that recording the assignment of a mortgage shall not be such notice of the assignment as to invalidate payments made by the mortgager to the mortgagee, applies where the payment, though not actually made by the mortgager, is so made as to release him from liability, as by an arrangement between all parties that he should deed the land to the person making the payment: *Goodale v. Patterson*, 51 M. 532.

355. A. gave to B. a note, not negotiable, secured by a mortgage, as security for the performance of an agreement. C. took an assignment of the mortgage and attempted to foreclose. *Held*, that C. was chargeable with notice of the equities between A. and B., and that A., on performing the agreement, could maintain against C. a cross-suit for the cancellation of the note and mortgage: *Humphrey v. Beckwith*, 48 M. 151.

356. Where a mortgagee, under a pretended claim of right, wrongfully got possession of the securities from the bailee of his assignee, and then received payment on the mortgage from the grantee of the equity of redemption, it was *held* that the mortgager, who had paid nothing, had no equities as against the assignee: *Chase v. Brown*, 32 M. 225.

VIII. SUBROGATION.

357. The doctrine of subrogation is to prevent fraud and do justice, and should not be applied where it would work injustice: *Kelly v. Kelly*, 54 M. 30.

358. Persons equitably entitled to land on paying a mortgage taken in good faith by another should be subrogated to the mortgagee's rights against the mortgager: *Warner v. Hall*, 53 M. 872.

359. Where a deed conveys premises subject to a mortgage which is included in the purchase money and which it identifies, the mortgagee on foreclosure may be so far subrogated to the mortgager as to have the benefit of the obligation to pay it, which the grantee has assumed: *Hicks v. McGarry*, 33 M. 667.

360. Where A. is fraudulently persuaded

by B. to advance money to him to discharge a mortgage by the promise to give security upon the land for the loan, which promise is not fulfilled, A. is subrogated to the mortgagee's rights: *White v. Newhall*, 68 M. 641 (March 2, '88).

361. Land was mortgaged to secure three notes payable at different times. The mortgagee foreclosed to obtain payment of the first two notes and sold the land subject to the third note not yet due. *Held*, that it is a conclusive presumption in such a case that the price obtained is less by the amount of the remaining encumbrance than it would otherwise have been; *also*, that if the mortgagee should afterward sue the mortgager for the amount of the third note, and the latter should pay it, the mortgager would be entitled to be subrogated to the rights of the mortgagee against the land, in order to subject it to the burden of paying the debt back to himself: *Shermer v. Merrill*, 33 M. 284.

362. K. paid off and discharged the first two out of three mortgages on certain property, and then took a new mortgage for the amount paid. *Held*, that this was subsequent to the one left unpaid, and that K. was not entitled to be subrogated to the rights of the first two mortgagees: *Kitchell v. Mudgett*, 37 M. 81.

363. A president of a corporation, who, to save the property of the company and his own interest as a bondholder and stockholder, pays out of his own moneys the interest due on a mortgage of such property, is entitled to be subrogated to the company's rights, and the fact that he charged the items of payment against the company in the hope that the business might pay enough to reimburse him does not change his equities: *Bush v. Wadsworth*, 60 M. 255.

364. Payment of encumbrances under an explicit oral agreement that the encumbered property shall be conveyed to the person paying them may be ground for subrogating him to the rights of the encumbrancer to the extent of the payment, but subject to such rights as may have arisen meanwhile: *Kelly v. Kelly*, 54 M. 30.

365. The mere expectation of an inheritance cannot constitute any such consideration for the payment of incumbrances thereon that the fear of having this expectation disappointed by the possible advent of other heirs can be made a ground for subrogation to the liens discharged: *Ibid*.

366. One whose sole interest in lands is under a trust deed, by virtue of which he is to

become entitled to them on paying certain mortgages upon them, and also certain other specified demands, is not entitled, if he repudiates the trust, to make any arrangements with the mortgagees by which he can be subrogated in equity to their rights without paying the other demands: *Smith v. Austin*, 11 M. 84.

367. A mortgage upon land belonging to a decedent's estate was paid off with money raised by means of an administrator's mortgage on the same land which was subsequently held invalid, though executed under color of authority from the probate court. *Held*, that the lender of such money might be subrogated to the rights that the prior mortgagee would have had if his mortgage had not been discharged: *Detroit F. & M. Ins. Co. v. Aspinall*, 43 M. 238, 45 M. 330.

368. Where land is deeded to secure the repayment of money borrowed from the grantee to pay off existing encumbrances, and it is applied to that purpose, the grantee, if the deed is adjudged invalid, can claim subrogation to the rights of the mortgagees whose liens have been discharged; and he would be entitled to a decree of foreclosure against the land so deeded as security: *Lockwood v. Bassett*, 49 M. 546.

369. Where property owned by two partners is subject to a mortgage, and as between the two it is the duty of one to discharge it, and the other pays the debt on condition that the mortgage shall enure to his benefit, an equity arises in his favor entitling him to indemnity through the mortgage: *Laylin v. Knox*, 41 M. 40.

370. Where a mortgage is executed to secure the debts of others than the mortgager, a devisee of the mortgaged premises, who redeems them from foreclosure sale, is subrogated to all the rights of the mortgager to enforce payment of the amount he has paid against the real debtors, or, if he is himself one of those debtors, he may recover the share the others should have paid: *Goodrich v. Leland*, 18 M. 110.

As to subrogation in case of payment of insurance money to mortgagee, see INSURANCE, §§ 101, 102.

IX. PAYMENT AND SATISFACTION; DISCHARGE; RELEASE; MERGER.

(a) *Payment and satisfaction.*

As to payment generally, see PAYMENT AND DISCHARGE.

1. Presumptions; what constitutes.

371. Twenty years from maturity a mortgage will be presumed paid: *Curtis v. Goode-now*, 24 M. 18.

372. Payment of a mortgage debt is not conclusively presumed from the lapse of many years, but there must be decisive proof that it is an existing lien to warrant a decree of foreclosure: *Cowie v. Fisher*, 45 M. 629.

373. A mortgage is not necessarily presumed paid, from lapse of time, if the mortgagee asserted his right to foreclose in due season, and there does not appear to be any adverse holding under the mortgage; the purchaser must be understood as claiming under the sale ever since it was made: *Baldwin v. Cullen*, 51 M. 83.

374. June 18, 1789, defendants' ancestor gave a mortgage payable Aug. 28, 1790. The mortgagee died in 1790, but administration on his estate was not granted until 1835, and the year following a bill was filed to foreclose the mortgage. *Held*, that the presumption of payment arising from the lapse of time was overthrown by the fact that there was no one, from the death of the mortgagee until the granting of administration, who could receive payment of the money and discharge the mortgage: *Abbott v. Godfroy's Heirs*, 1 M. 178.

375. When a creditor by mortgage receives from his debtor property to near the amount of his claim, and surrenders the obligations, and the evidence leaves it in doubt whether it was the understanding of the parties that the property should be received in payment, it will be presumed in favor of a subsequent purchaser of the property mortgaged that such was the intent: *Ormsby v. Barr*, 21 M. 474.

376. Payments upon a mortgage are presumed, in the absence of a finding, to have been made at or near the time they fell due: *Albright v. Cobb*, 84 M. 316.

377. The only question in a foreclosure proceeding was whether the date of a receipt had been changed from April 1, 1874, to Sept. 23, 1871, and it was determined from inspection and from facts bearing upon the probabilities that the date had not been so changed, and that a payment had been made at the apparent date of the receipt which ought to have been credited upon the mortgage: *Hazen v. Phillips*, 39 M. 867.

378. Mortgages may be paid and extinguished without making use of any writing: *Nims v. Sherman*, 43 M. 45.

379. A mortgager who claims to have

made a large payment to a deceased person shortly before the latter's death, but shows no voucher, indorsement or entry of the payment by the deceased, should produce very convincing proof to sustain his position: *Wakeman v. Akey*, 29 M. 308.

380. Where a note accompanying a mortgage is not produced or accounted for, it must be presumed paid, as against the party setting up the mortgage: *Bassett v. Hathaway*, 9 M. 28.

381. A deposit by a mortgager in a bank with instructions to the officers of the bank to apply it on the notes secured by the mortgage, which they fail to do, does not place the money subject to the control of the holder of the notes, and does not, therefore, operate as payment: *Pease v. Warren*, 29 M. 9.

382. Where there was a conflict of testimony as to whether mortgages sought to be foreclosed had been drawn into a settlement and paid, the fact that after a certain meeting which was conceded to have taken place for the purpose of a settlement the mortgagee, though a money-lender of moderate means, never sought another settlement, and neglected for seven years to enforce his securities, but stood by and saw the premises sold, and the title warranted as unincumbered, without asserting any claim, was *held* to indicate payment: *Shattuck v. Foster*, 82 M. 427.

383. A person took a conveyance of land from his mother, in consideration of which he was to support her for the rest of her life. But he shifted the burden upon a debtor whose mortgage he held, bargaining to allow him upon it a dollar a week, which was to be increased to a reasonable compensation when she became more infirm, as she did two years later. The mortgage was to secure about \$700, due in four years. For seven years the creditor indorsed \$50 a year upon the mortgage; for the next four years \$75, and for the next three \$100. It was shown that after the mother became infirm from three to five dollars a week would have been a reasonable compensation for her board and care, and after she left the debtor's house her son in fact paid three dollars a week therefor. *Held*, that a bill to foreclose the mortgage should be dismissed and the mortgage discharged as fully paid: *Gallup v. Jackson*, 47 M. 475.

384. A bill to enjoin a foreclosure at law and to compel a discharge of the mortgage was sustained where the weight of evidence tended to show that the mortgage debt had been satisfied by offsetting it against a counter-claim, and that written evidence of this fact was destroyed by fire, the mortgagers being after-

wards left to deal with the mortgaged premises undisturbed for years during which the lands were being sold and built upon: *Green v. Engelmann*, 39 M. 460.

385. A mortgage debt may be deemed not to have been settled where it appears that the mortgagee always claimed it as an existing obligation, as the mortgager well understood; that, although years had elapsed, no steps had been taken to procure its surrender or cancellation; and that the mortgager had recognized its existence: *Lyon v. McDonald*, 51 M. 435.

386. The evidence held to sustain the case made by the bill, that the mortgage held by defendant, and which he was seeking to foreclose by advertisement, had been fully paid and satisfied: *Hanchett v. McKelvey*, 32 M. 33.

387. Where a mortgagee has property in his hands for which he is accountable to the mortgager, the latter, in suing him for refusing to discharge the mortgage, can insist that the property be accounted for upon it by way of determining whether it has not been satisfied: *Wilber v. Peirce*, 56 M. 169.

388. Where a mortgager pays money to the administrator of the mortgagee, with distinct reference to the ownership of the mortgage by the estate, and in the expectation and understanding on both sides that on the settlement the sums of money paid are to be taken into account against the mortgage, either as payment or by way of set-off, it is not important that they should have been regarded as payments at the time they were made; nor will it necessarily affect the right of the mortgager to have them so applied that he took, from time to time, as evidence of the sums of money paid, notes reserving annual interest: *Jones v. Smith*, 23 M. 360.

389. A mortgage sought to be foreclosed was held to have been satisfied by the assignment and subsequent payment of another mortgage: *Van Buren v. St. Joseph C. V. F. Ins. Co.*, 28 M. 393.

390. Where a mortgage was given to secure the payment of a promissory note, and to indemnify the mortgagee as accommodation indorser, and at the maturity of the note the mortgager procured the mortgagee's indorsement to a second note for a larger amount, with a portion of the proceeds of which the first note was retired, and which itself was met at maturity by renewal by a third note with the same indorsement, it was held that the mortgagee, having, as indorser, been compelled to pay the third note after protest, the mortgage was not in equity satisfied as between the parties, it having been given to secure not the particular note only,

but the debt itself: *Bozheimer v. Gunn*, 24 M. 372.

391. Where a lot of land was conveyed by complainant, subject to the payment of a mortgage on certain other lands, and proceedings were had in chancery to foreclose the mortgage, and the decree became the property of one of the defendants, who also purchased the lot on which payment was charged, it was held that such purchase amounted to a satisfaction of the mortgage to the value of the lot so purchased: *Mason v. Payne*, W. 459.

392. Where one, by purchasing at an invalid foreclosure sale, becomes the owner of a mortgage while also owning the land from which it should be satisfied, his purchase is to be deemed a payment and satisfaction of the mortgage if the land is sufficient for the purpose: *Carley v. Fox*, 38 M. 397.

393. Where a guardian's sale is made subject to a mortgage, and the mortgage is owned by the purchaser at the sale, the mortgage is in effect cancelled: *Lynch v. Kirby*, 36 M. 239.

394. When mortgaged lands which had been sold by the mortgages in parcels were subject to two mortgages, and the proceeds of the last parcel sold were applied upon the first of the mortgages, and as a part of the same arrangement the mortgagee in the second, who was mortgager in the first and under obligations to pay it, assigned the second to a party who was to hold it for the protection of the fee against another specified claim, but this party afterwards sold it for value to one who took it in good faith, held, that under the rule that the proceeds must be applied to the satisfaction of the mortgage in the inverse order of alienation the mortgage was to be deemed satisfied in the first arrangement; and the second assignment, not being with consent of the owner of the fee, the assignee took nothing thereby: *McVeigh v. Sherwood*, 47 M. 545.

395. Equity has jurisdiction upon a bill seeking to have a mortgage which constitutes an apparent lien on complainant's title declared satisfied: *Ormsby v. Barr*, 22 M. 80.

2. To whom may payment be made.

396. Voluntary payment of a mortgage to one not entitled to collect it, after notice from the real owner not to do so, and after suit brought by such owner to foreclose the mortgage, is no protection to any one: *Chase v. Brown*, 32 M. 225.

397. Payment of an intestate's mortgage, if made by the mortgager in good faith to the person to whom the administrator tells him it

belongs, is good: *Reynolds v. Smith*, 57 M. 194.

398. A mortgager who, without knowledge that the mortgage has been assigned, pays the debt to the mortgagee is entitled to have the mortgage cancelled: *Ingalls v. Bond*, 66 M. 338 (June 16, '87).

399. Where a mortgage given to secure a note made payable at a bank has been assigned without the indorsement of the payee upon the note, the officers of the bank holding the mortgager's money for payment of the mortgage are not justified, when the note and mortgage and the assignment are presented by the assignee for payment, in declining payment upon the objection that the note is not indorsed by the payee; the formal assignment, duly acknowledged and recorded, would be the best possible evidence of ownership, and the real owner would be entitled to demand and receive payment whether the note is indorsed or not: *Pease v. Warren*, 29 M. 9.

3. Application of payments.

400. The application of payments upon a mortgage will be as justice and equity require, where no agreement controls, or where an agreement is unlawful. Scattering payments permitted by the mortgagee should, if not otherwise agreed, be applied (1) to the extinguishment of interest due; (2) to the payment of principal: *Morgan v. Michigan Air Line R. Co.*, 57 M. 430.

401. Where a mortgager and mortgagee agree that certain mortgaged property shall be sold and its proceeds applied on the general indebtedness after satisfying other claims, they still have power to make a different disposition of the proceeds, and may be bound thereby, if third persons interested in the premises do not insist that the proceeds shall be applied in reduction of the debt: *Perrin v. Kellogg*, 88 M. 720.

402. Where a mortgager gave a note for the whole amount of his debt, including sums for which he had become indebted before the mortgage was given and which were not secured by it, and the mortgagee applied payments made to him upon the note generally, it was equivalent to an application upon the new and old indebtedness *pro rata*, and a different application could not be made where it did not satisfactorily appear to have been directed or to have been for the interest of the parties: *Shelden v. Bennett*, 44 M. 634.

403. A mortgager who has paid interest upon ten per cent. interest, when behind in his payments, is entitled to have it allowed on

the principal, as ten per cent. is the statutory maximum of interest that may be taken in Michigan: *Havens v. Jones*, 45 M. 253.

404. A mortgager paid a sum of money in settlement of a dispute which had arisen from the cutting of timber on the mortgaged land. The settlement left a large amount of timber on his hands ready for working up, and the settlement took account of the fact that it was cut without expense to him. *Held*, that in the absence of evidence of any understanding with the mortgagee that the amount paid might be applied upon his mortgage, it would not be assumed that the mortgagee had agreed to such an application of payments, nor would such application be decreed: *Hart v. Carpenter*, 36 M. 402.

405. Insurance policies upon mortgaged property were assigned by the mortgager to the mortgagee as additional security, and it was agreed that in case of loss the proceeds should be applied in payment of the mortgage indebtedness. *Held*, that the money collected upon them by the assignee should have been so applied, unless such a disposition of it would be contrary to the rights of a creditor of the assignee to whom the latter had assigned the notes and mortgage to which the policy was collateral; and if such creditor knew of the assignment of the policies and did not object, he was bound by the agreement, especially if he joined in notifying the assignor to pay the whole mortgage debt to the assignee: *Wilcox v. Allen*, 36 M. 160.

406. A creditor of a corporation, who held its bonds as collateral security, guaranteed its performance of a contract, and the corporation contracted with him to carry on its business and apply the proceeds to that purpose and to its current working capital, and agreed that any surplus might be applied to the payment of current indebtedness. The bonds were secured by mortgage. *Held*, that this did not fix the character of his possession of the corporate property as that of the mortgagee, and that the proceeds received by him did not apply as payment on the mortgage, and could only be so applied as set-off: *Beecher v. Marquette & P. Rolling Mill Co.*, 45 M. 103.

(b) Discharge.

1. In general.

407. By the discharge of a mortgage—as the term is commonly understood—something that relieves the land from the apparent lien is intended; not a mere payment: *Blackwood v. Brown*, 29 M. 483.

408. A mortgage cannot be discharged piecemeal on the record: *Collar v. Harrison*, 28 M. 518.

409. Payment at any time before a foreclosure becomes absolute, with the legal costs, if any, will discharge the mortgage, and no conveyance is necessary: *Caruthers v. Humphrey*, 12 M. 270; *Van Husan v. Kanouse*, 13 M. 303.

410. Payment, release, or anything that extinguishes the debt, *ipso facto* extinguishes the mortgage: *Ladue v. Detroit & M. R. Co.*, 13 M. 380.

411. A mortgage cannot survive the debt secured by it where that debt has been paid by the debtor to the holder of the mortgage: *Byles v. Kellogg*, 67 M. 818 (Oct. 20, '87).

412. Where the holder of a mortgage executes a quitclaim deed of the premises to one who has received a deed thereof, under an agreement that he shall pay the mortgage, the effect is to discharge the lien of the mortgage; and a subsequent assignment of the mortgage to a third person will not entitle the latter to enforce it: *Jerome v. Seymour*, H. 357.

413. A. bought from B. a piece of land which B. had mortgaged to C. to secure a note for \$500. C. owed \$450 to D., to whom he assigned B.'s note and mortgage to secure that debt. A. then paid D. the amount of C.'s debt, took an assignment of B.'s note and mortgage, and claimed that he had thereby discharged the mortgage and cleared the land of any lien. C., however, still claimed an interest in the mortgage to the extent of the surplus over his own debt, and assigned such interest to E., who assigned it to F., and F. proceeded to foreclose against A. Before the period of redemption ran out A. filed a bill against C., E. and F. to annul the foreclosure proceedings. Held, that A.'s payment to D. discharged the lien of the mortgage only *pro tanto*, and that A. thereafter held the mortgage in trust for C.'s assignee for the balance secured by it; also, that a lien remained upon the land for the amount of such balance, and C.'s assignee could enforce it in this suit as by way of cross-bill: *Olcott v. Crittenden*, 68 M. 230 (Jan. 19, '88).

414. Where notes of three persons are given in payment and a mortgage is also given as security, the mortgager is to be held for payment upon the mortgage only and under its conditions. And if the mortgagee, without the mortgager's consent, extends the time for payment of a note, the mortgage lien is discharged: *Metz v. Todd*, 36 M. 473.

415. A quitclaim obtained by the mortgager from the mortgagee of premises, for the

purpose of perfecting title by redeeming from a sale on partial foreclosure, cannot be construed as discharging the entire mortgage: *Mabie v. Hatinger*, 48 M. 341.

416. If a mortgagee bids in the premises on foreclosure sale for an instalment due, and afterwards gives a warranty deed of the land, the warranty deed discharges the mortgage and releases indorsers of such notes as may be secured by subsequent instalments thereof: *Bridgman v. Johnson*, 44 M. 491.

417. A lien holds if not discharged, surrendered, waived or extinguished; the destruction of the paper evidence of it, which in this case was an unrecorded purchase-price mortgage, does not annihilate it so far as the parties and all persons claiming with notice are concerned: *Sloan v. Holcomb*, 29 M. 153.

418. Land was sold to A., subject to a mortgage to B., payment of which A. assumed. Unknown to both A. and B. there was a prior mortgage to C. on the same land, and on their discovering this, A. promised B. to pay it off. Held, that a subsequent foreclosure by C., at which A. became the purchaser, did not extinguish the lien of B.'s mortgage: *Manwaring v. Powell*, 40 M. 871.

419. A provision in a contract that a party shall discharge his mortgage "at the expense" of the mortgager imports, in the absence of explanation, that he is to do it on being reimbursed the expense attending the drawing, execution and recording of the discharge, and not that he is to do it only on being paid the amount called for by the mortgage, as well as being reimbursed such expense: *Vary v. Shea*, 36 M. 383.

420. Damages for failure to perform a contract to procure the discharge of a mortgage cannot be claimed if it does not appear that the mortgage was foreclosed or the claimant damaged: *Rose v. Jackson*, 40 M. 30.

421. A grantee of premises covered by a mortgage which is alleged to have been paid may maintain a bill against the mortgagee for its discharge without proving any other interest in the premises than the grant from the mortgager. If the mortgage has been paid, the mortgagee will not be allowed to dispute the mortgager's title or that of his grantee as a reason for refusing to discharge it: *Ormsby v. Barr*, 23 M. 80.

422. The fact that a judgment has been recovered on a note secured by mortgage is no answer to a suit by the mortgagers to have the mortgage set aside on showing that the note has been paid: *Rickle v. Dow*, 39 M. 91.

423. A forged discharge on the record of a mortgage gives no rights to one who takes a

second mortgage on the strength thereof, unless the prior mortgagee has been negligent: *Keller v. Hannah*, 52 M. 535.

424. Where a discharge of a mortgage is given on the receipt of less than is due, by reason of an erroneous computation of interest, chancery may refuse to set aside such discharge, if circumstances appear rendering it inequitable for the mortgagee to collect the full amount of interest: *Wright v. Garrison*, 40 M. 50.

425. A discharge upon the record of a mortgage is not an absolute bar to a foreclosure, unless there has been actual satisfaction. The facts may still be investigated. Such discharge is evidence of a high character, and sufficient to sustain the rights of all persons interested, unless the person setting up the discharged mortgage shows some accident, mistake or fraud; and this must be shown satisfactorily, and, if not, the discharge is conclusive proof of payment in favor of third persons, who have a right to look to the record for protection: *Ferguson v. Glassford*, 68 M. 88.

As to restoration of mortgages discharged by mistake, see EQUITY, §§ 881-883.

2. Discharge by tender.

As to TENDER generally, see that title.

426. Where a mortgager, after the mortgage has become due, but before foreclosure, tenders to the holder the full amount due, which the latter refuses to receive, the lien of the mortgage is thereby discharged, and if a bill is afterwards filed by the holder to foreclose it is not necessary for the mortgager to bring the tender into court or to show that it has been kept good: *Caruthers v. Humphrey*, 12 M. 270; *Van Husan v. Kanouse*, 18 M. 808.

427. A tender of the amount due upon a mortgage, if made so that the holder of the mortgage understands it at the time as a present, absolute and unconditional tender thereof, operates *ipso facto* to discharge the lien of the mortgage, though the tender itself be not thereafter kept good: *Potts v. Plaisted*, 30 M. 149.

428. A mortgagee loses his lien by evading tender of payment: *Ferguson v. Popp*, 42 M. 115.

429. An absolute tender by a subsequent mortgagee will discharge the lien of a prior mortgage; but a tender coupled with a claim of an allowance not lawfully demandable will not: *Sager v. Tupper*, 35 M. 134.

430. One who seeks to obtain the discharge of a mortgage lien, or an assignment of the

mortgage, or subrogation to the mortgagee's rights, must tender not only the amount due on the mortgage but the necessary expenses already incurred in taking steps to enforce the security: *Shutes v. Woodard*, 57 M. 213.

431. Where the discharge of a mortgage was sought on the ground that payment had been tendered, the court declined to consider the question of usury, but held that complainant must abide by his tender: *Canfield v. Conkling*, 41 M. 371.

432. Where a mortgagee has taken no steps to entitle him to an attorney fee, if such a fee is recoverable at all, he is bound to accept such a tender as would be sufficient without it: *Ibid*.

433. Where a mortgagee refused a tender of an award and a sum of money simply on the ground that he was not bound to receive the award, an accidental deficiency in the amount of money offered, caused by an erroneous computation of interest, was held not to prejudice the mortgager when the award had been held good on a bill to redeem: *Flanders v. Chamberlain*, 24 M. 305.

434. A tender by a mortgager to an assignee of the mortgage, on condition that the latter, besides discharging the mortgage, should execute and deliver to him a quitclaim deed of the land described therein, is not such an unconditional tender as will cut off the mortgage lien: *Dodge v. Brewer*, 31 M. 227.

435. The holder of a mortgage to whom a tender is proposed is entitled to a reasonable opportunity to look over the mortgage and accompanying papers to calculate and ascertain the amount due, and if such papers are not present, he must be allowed a reasonable time in which to get them and make the calculation; he is not bound, at the risk of losing his entire debt, to carry in his head at all times the precise amount due on any particular day: *Potts v. Plaisted*, 30 M. 149.

436. A tender was abruptly made upon the street to the owner of some overdue mortgages, who was known to be sick and nearly blind, and who declined to transact the business until the next morning. The next morning he offered to receive the money, but reliance was then had on the tender and it was not paid. Held, that the tender did not discharge the lien of the mortgage: *Waldron v. Murphy*, 40 M. 668.

437. A mortgager, by way of tender, made repeated offers of money to the mortgagee while they were riding together on the public highway. He involved it with other matters of dealing between them, and the settlement was interrupted by a quarrel, but before any

costs were incurred the mortgagee offered to receive the amount due. *Held*, that no tender had been made that would discharge the mortgage lien: *Parks v. Allen*, 42 M. 482.

438. A woman engaged in her ordinary avocations is not bound to know at all times what is owing her upon a mortgage, and to be ready to determine forthwith, without opportunity for examination and computation, whether she will accept any particular sum offered her: she must have reasonable opportunity to satisfy herself what her rights are: *Root v. Bradley*, 49 M. 27.

439. A mortgagee has a right to refuse any tender of the amount due on the mortgage if made by one who, as between the mortgager and mortgagee, is a stranger to their dealings, and therefore has no right of redemption; so *held* where tender was made by one who was neither mortgager nor mortgager's grantee, and who did not act in the interest or at the request of the mortgager and had himself no interest in the equity of redemption, but only held some tax-titles which were not subject to the mortgage: *Sinclair v. Learned*, 51 M. 835.

440. Courts will hesitate to enforce the forfeiture of mortgage security for the refusal of a tender when its apparent purpose is to force the mortgagee to accept it once and with no opportunity of determining whether it is the proper amount: *Post v. Springsted*, 49 M. 90.

441. Where tender and refusal are set up as a defence to foreclosure they must be very clearly proved. One who means to make a fair offer of the amount due on a mortgage by way of tender and payment, and with the purpose of insisting, if such tender is refused, that the lien is discharged, is bound to be straightforward and disclose his purpose and give the holder of the mortgage a reasonable chance to act intelligently: *Proctor v. Robinson*, 35 M. 285.

442. Where tender is made to the holder of a mortgage there should be clear evidence that it was made in good faith and was understood by the holder to be a present absolute tender, intended to be in full payment and extinguishment of the mortgage without any condition: *Potts v. Plaisted*, 30 M. 149.

443. Where the discharge of a mortgage is demanded on the ground of a tender the evidence of tender must be clear and put defendant plainly in the wrong, especially where demand is made for the statutory penalty: *Engle v. Hall*, 45 M. 57.

444. A tender of the amount due on a mortgage must be open, fair and reasonable, and made at the right time and place, and to the proper person; and the refusal of such a

tender must be without justifiable excuse to warrant the forfeiture of the mortgage security: *Post v. Springsted*, 49 M. 90.

3. Penalty for failure to discharge.

445. H. S. § 5704, in imposing a penalty for neglecting to discharge a mortgage "after full performance of the condition," means so far as the condition is legal and binding; the amount of consideration may therefore be disputed: *Wilber v. Peirce*, 56 M. 169.

446. The purpose of the penalty imposed by statute for refusing to discharge a mortgage on tender of the amount due is not only to indemnify the mortgagee for his trouble but to act as a punishment: *Engle v. Hall*, 45 M. 57.

447. The statutory penalty for refusing to discharge a mortgage cannot be recovered of one who has no interest in the mortgage or the debt, and has no means of knowing himself to be in default for not giving a discharge: *Murphy v. Fleming*, 69 M. 185 (March 2, '88).

448. Where payments of annual interest upon a mortgage have been received shortly after due, with the understanding between the parties that they should be accepted in full satisfaction of the yearly interest, a subsequent assignee, who purchased after maturity of the mortgage, is liable to the statutory penalty for refusing to release the mortgage upon a tender of the amount due computed upon that basis, although the tender was insufficient by strict computation, applying the payments at large: *Barnard v. Harrison*, 80 M. 8.

449. Said penalty is imposed only for a wrongful refusal, and not for one made in good faith by advice of counsel and under a mistake as to one's legal rights: *Myer v. Hart*, 40 M. 517.

450. The penalty will not be imposed if the mortgagee refused in good faith and in reliance upon supposed legal rights: *Parkes v. Parker*, 57 M. 57.

451. The penalty is not imposed when there has been an honest and reasonable difference between the parties as to their right: *Burrows v. Bangs*, 34 M. 304.

452. The court declined to impose the statutory penalty for refusing to discharge a mortgage on tender of the amount due or to order the cancellation of the lien, where the case was such that the mortgagee might in good faith have been mistaken as to what he had a right to exact: *Canfield v. Conkling*, 41 M. 371.

453. The penalty should not be enforced where the refusal was not manifestly unreason-

able and the mortgagee honestly believes that his claim is not satisfied: *Huxford v. Eslow*, 53 M. 179.

454. Whether the honesty of a mortgagee in believing that the mortgage has not been satisfied is a sufficient defence to an action for the penalty for not discharging it if it has been, *quere*: *Wilber v. Peirce*, 56 M. 169.

455. One who gives an invalid mortgage has nevertheless the right to pay it off, and consequently the right to have it discharged; its invalidity therefore cannot be pleaded as a defence to an action for the penalty for refusing to discharge it: *Ibid*.

456. The statutory penalty for refusing to discharge a mortgage is recoverable in equity on a bill to redeem: *Cowles v. Marble*, 37 M. 158.

(c) Release.

457. One holding such a lien as a purchase-price mortgage can contract to release the lien and hold only the personal security to which it is collateral, and such an arrangement may be proved by circumstantial evidence, but not by careless expressions and dim inference: *Sloan v. Holcomb*, 29 M. 153.

458. A mortgage to secure the payment of certain judgments was given to a trustee for the benefit of different judgment creditors, each of whom already held separate mortgages on other property securing the same judgments. The holder of an interest in parcels covered by all these mortgages negotiated for a release and obtained one which purported to discharge from the earlier mortgage only, but which was evidently understood by all parties to release from the later one also. The creditors afterwards obtained an assignment from the trustee and sought to foreclose. *Held*, that a release by the *cestuis que trustent* was good in equity and discharged the later mortgage; that their bill should be dismissed, and that a cross-bill was not necessary for establishing a defence thereto: *McBride v. Wright*, 46 M. 265.

459. Where a mortgagee, with knowledge of a subsequent mortgage on a part of the premises mortgaged to him, releases a part or the whole of the premises not covered by the subsequent mortgage, and the remaining property is not sufficient to pay both, equity will postpone the payment of the first mortgage out of the proceeds of a sale of the remaining property to the extent of the injury done the subsequent mortgagee by the release: *James v. Brown*, 11 M. 25.

460. One who releases a mortgage so far as it relates to land that is primarily liable for

the debt, and which at the time of the discharge is worth more than enough to pay it, loses his lien altogether, and cannot enforce it against other lands: *Webb v. Rowe*, 35 M. 58.

461. Where, in order to save costs, a mortgage was released as to some land already encumbered to more than its value and under foreclosure, it can hardly be said that the security of those who claimed subrogation was decreased: *Perrett v. Yardsdorfer*, 37 M. 596.

462. Unless a prior mortgagee has notice of facts enough to put a prudent man on inquiry he may release portions of the mortgaged premises without examining the records to ascertain, or inquiring, whether there are subsequent purchasers or encumbrancers to be affected by the release: *James v. Brown*, 11 M. 25; *Dewey v. Ingersoll*, 42 M. 17.

463. A mortgagee's knowledge of a record of a deed to, and of possession and improvement by, a subsequent purchaser, was *held* enough to put him on inquiry before releasing other parts of the premises from the mortgage: *Dewey v. Ingersoll*, 42 M. 17.

464. A mortgagee who has notice that since the mortgage was given a portion of the land has been sold cannot release any part of the land to the prejudice of the purchasers. It is enough if he is notified, by letter from the mortgager as to the names of the buyers, and if the deed is on record: *Hall v. Edwards*, 43 M. 473.

465. Where mortgaged property has been wrongfully released to the prejudice of subsequent purchasers and the value of the parcel paid to the mortgager, the purchasers are equitably entitled on foreclosure to have the amount for which the parcel was released deducted from the mortgage debt before their parcel is sold: *Ibid*.

466. A mortgage for \$3,000 contained a stipulation that when \$2,000 was paid the mortgagee should release a portion of the premises. Upon payment of \$1,000 nearly all the rest of the premises was released. Foreclosure becoming necessary, *held*, that it could not be limited to \$1,000, as the security on the premises that had not been released had not been confined to \$2,000: *Vary v. Chatterton*, 50 M. 541.

467. The holder of a mortgage covering two parcels agreed in writing that when he should obtain deeds of them, *i. e.*, on foreclosure, he would convey one of them to the mortgager's wife; the mortgager was to continue in possession of the other parcel until the mortgage-holder should sell it, and should meanwhile pay ten per cent. interest on the face of the whole mortgage. *Held*, that this

amounted to an agreement that in consideration of the change in security the first parcel should be released from the mortgage lien. And if after making such an arrangement the mortgage-holder found it necessary to proceed to a new foreclosure in order to correct an error in his own proceedings he could not charge the mortgager with the expense: *Clark v. Stilson*, 36 M. 482.

Release by last secretary of corporation is valid, see CORPORATIONS, § 67.

(d) *Merger.*

468. Where one owning the equity of redemption of lands which are subject to two mortgages buys in the first, and takes an assignment thereof to himself, such mortgage is not thereby merged in the fee: *Dutton v. Ives*, 5 M. 515.

469. The purchase, by a mortgagee, of the equity of redemption will not merge the mortgage where there are intermediate rights, or the interest of the mortgagee requires that the titles should be kept separate: *Cooper v. Bigly*, 18 M. 463.

470. The holder of a mortgage loses no substantial rights by becoming owner of the equity of redemption: *Snyder v. Snyder*, 6 M. 470.

471. A quitclaim deed from a mortgager to his mortgagee does not cause a merger of the mortgage so as to deprive the mortgagee of his right of priority, where the intention and the mortgagee's interest are otherwise: *Tower v. Divine*, 37 M. 443.

472. A mortgage cannot remain so after acquiring the fee unless the mortgage needs to be kept alive to protect his rights: *Jackson v. Evans*, 44 M. 510.

473. A mortgager and his grantees having deeded the mortgaged premises and other property to the mortgagee and others, in consideration of the mortgage debt and other debts, and taken back a contract for reconveyance on certain specified conditions, the mortgage debt was held to be thereby extinguished: *McCabe v. Farnsworth*, 27 M. 52.

474. A mortgagee's equitable title is merged in the legal title, if he acquires it, unless he intends otherwise, or unless his acceptance of the legal title is brought about by fraud or deceit. And his intent is a question of fact: *Ann Arbor Savings Bank v. Webb*, 56 M. 377.

475. A woman mortgaged land to her mother, and afterwards deeded it to a bank to secure loans made by the latter to her son. In order to obtain a first lien for the bank and get rid of the prior lien held by the mother,

the daughter and the bank gave simultaneous warranty deeds to the mother, the bank at the same time taking from her her personal note and mortgage to secure the debt to it. The mother did not know that the effect of this, if so intended, would be to merge her equitable title and destroy her prior lien, and was left to think that it would not affect such lien. She had no counsel, and the only lawyer who took part in the transaction acted in the bank's interest, whether employed by it or not. Held, that equity would not permit the merger, and that if the bank sought to avoid the prior lien it should have required the mother, in giving her mortgage to it, to discharge the former mortgage: *Ibid*.

476. If a grantee of mortgaged premises assumes the encumbrance and afterwards takes an assignment of the mortgage, he extinguishes the debt, and cannot afterwards give any right to foreclose the mortgage by assigning it: *Winans v. Wilkie*, 41 M. 264.

477. Where the owner of lands treats a mortgage thereon that has been assigned to him as a valid instrument, and transfers it as such, he is estopped from insisting, as against his assignee, or any one claiming under him, that in his hands it had merged and disappeared in the fee. And after he has recorded the assignment a purchaser from him is also estopped from insisting on such merger: *Poirrell v. Smith*, 30 M. 451.

478. A man after giving a mortgage upon certain described lands agreed to get a tax-deed thereto from the state to the mortgagee, whose name was *Hurst*, and who was to reconvey on the repayment of moneys advanced by him to the mortgager. The tax-deed was accordingly obtained, but as it was made out in the name of *Hunt*, the mortgagee quitclaimed to the mortgager under that name, and the latter gave him back a warranty deed, this being done to save the expense of a foreclosure. Held, that this transaction should be treated as intended to confirm the mortgage title and not destroy it; and that the mortgage was to be regarded as continuing for purposes of security, and open to foreclosure: *Hurst v. Beaver*, 50 M. 612.

479. A mortgage is not merged in a tax-title acquired by the mortgagee after the mortgage was given and for the purpose of protecting it: *Baker v. Clark*, 52 M. 22.

X. FORECLOSURE IN EQUITY.

As to matters of pleadings, practice, etc., in foreclosure suits in common with other chancery causes, see EQUITY, IV-XII.

(a) *When right of foreclosure exists.*

1. In general.

480. A foreclosure bill will not lie until the debt secured by the mortgage under foreclosure falls due: *Kelly v. Bogardus*, 51 M. 522.

481. A mortgage securing an agreement, conditioned on the success of a pending suit, cannot be foreclosed if the suit fails: *Lamb v. Scullen*, 61 M. 280.

482. Where a debt is made payable after several years, but the interest is payable annually, a bill to foreclose the mortgage which secures it may be properly filed after the expiration of the year, if interest is in arrears: *Dederick v. Barber*, 44 M. 19.

483. A mortgage was given to secure the payment of judgments confessed by the mortgager, but which were void for want of compliance with the statute. Bill being filed to foreclose, and no proof made of any indebtedness, the bill was dismissed: *Austin v. Grant*, 1 M. 490.

484. A condition in a mortgage that the mortgager "shall promptly pay and discharge all notes and papers of his upon which the mortgagees shall become indorsers or acceptors, together with all the interest, costs and charges accruing thereon, so as to save said mortgagees harmless by reason of their connection with such paper," is broken at once on a failure to pay the paper at maturity, and a right to foreclose accrues, without further action of the mortgagees: *Butler v. Ladue*, 12 M. 173.

485. In a mortgage with the condition above set forth, the power of sale was limited to the case of the mortgagees being damnified by paying the debts. It was held that the power of sale need not be co-extensive with the condition of the mortgage, and that the remedy in equity was open for every breach of the condition, whether the parties had seen fit to provide for such a breach in the power of sale or not: *Ibid.*

486. Where one holds a chattel mortgage as security for the payment of a note, and afterwards takes a mortgage on real estate conditioned in the usual form for the performance of the condition of the note, he is not obliged to resort to the chattel mortgage before foreclosing that upon real estate: *Davis v. Rider*, 5 M. 423.

487. Where a mortgage covenanted that, on default in payment of interest, the whole amount of the debt should become due if the holder so elected, the mortgagee, who had assigned the mortgage and indorsed the notes

secured by it, was held not to be so far interested in the question of election as to be entitled to disturb a decree against him as indorser on the ground that notice to him of such election was not alleged or proved: *English v. Carney*, 25 M. 178.

488. Whether a formal notice of an election by the mortgager to treat the whole amount as due for the non-payment of interest is necessary before commencing foreclosure, or whether the want of such notice affects anything more than the question of costs, *quere: Ibid.*

489. It seems that formal notice of an election to foreclose for the whole debt, if an instalment is overdue, is unnecessary, and a declaration in the bill, of such election, is enough: *Johnson v. Van Velsor*, 43 M. 208.

490. The only effect of an omission, before filing a foreclosure bill, to demand payment at the place stipulated in the mortgage, would be to prevent a recovery of costs: *Norton v. Ohrns*, 67 M. 612 (Nov. 10, '87).

491. A mortgagee cannot maintain a foreclosure bill as a proceeding auxiliary to an ejectment suit: *Livingston v. Hayes*, 43 M. 129.

492. One who holds several securities for the same debt may foreclose either of them at his option until his debt is satisfied: *McKinney v. Miller*, 19 M. 142.

2. Lapse of time; limitations; laches.

493. The fact that an action at law upon the debt or obligation secured has become barred by the statute of limitations or by bankruptcy does not prevent foreclosure, or affect the validity of the mortgage: *Michigan Ins. Co. v. Brown*, 11 M. 265; *Goodrich v. Leland*, 18 M. 110, 117; *Powell v. Smith*, 30 M. 451; *Webber v. Ryan*, 54 M. 70; *Damon v. Deeves*, 57 M. 247.

494. Lapse of time, in connection with non-payment of interest, and continued possession of the mortgager, unaccompanied by any effort on the mortgagee's part to enforce payment, is not a legal but an equitable or presumptive bar, and the presumption may be rebutted by circumstances. What circumstances will rebut the presumption must depend upon the facts in each particular case: *Abbott v. Godfroy's Heirs*, 1 M. 178; *Baent v. Kennicutt*, 57 M. 268.

495. Prior to H. S. § 8709, foreclosure in equity could take place at any time before a presumption of payment arises by the lapse of twenty years: *Michigan Ins. Co. v. Brown*, 11 M. 265.

496. A mortgage on lands given to secure notes that have been allowed to run after maturity may be foreclosed at any time within the period of the limitation of actions for the recovery of real estate (but see H. S. § 8709): *Detroit Savings Bank v. Truesdail*, 38 M. 430.

497. Foreclosure of a mortgage dated in 1855 was not barred in 1878 where there was proof of payments made as late as 1866 by the mortgager as agent for his wife, who held the mortgaged interest under an assignment from a mesne purchaser: *Butler v. Hogadone*, 45 M. 390.

498. The lapse of less than twenty years before filing the bill does not (this was prior to H. S. § 8709) bar the foreclosure of a mortgage given for either indemnity or payment: *Shelden v. Warner*, 45 M. 638.

499. But H. S. § 8709 (act 204 of 1879) requires suits or proceedings to foreclose mortgages on real estate to be commenced within fifteen years from the time when the mortgage became due or within fifteen years after the last payment made thereon; with a saving clause of five years as to mortgages that would otherwise have been barred at once: Pub. Acts, 1879, p. 186.

500. Foreclosure of a mortgage not under seal is not barred in less time than would bar a sealed one: *McKinney v. Miller*, 19 M. 142.

501. The dismissal of a foreclosure bill was affirmed where the mortgage was never recorded, and the mortgagee had died twenty-nine years before suit, and no attempt to procure administration on the estate or to enforce the mortgage was made until after the mortgager's death, and there were indorsements indicating that nearly the whole sum had been paid, and some evidences of a counterclaim that would have extinguished the rest of it: *Burrow v. Debo*, 47 M. 242.

502. A delay of twelve years from the maturity of the postponed mortgage, and six years after such foreclosure, and the postponement of suit until the original mortgager was dead and the foreclosure title vested in his heirs, should in a case of doubt put complainant to the necessity of making out a plain case: *Burdick v. Wheelock*, 48 M. 289.

503. A mortgagee delayed foreclosure four years after an assignment of the mortgage had been obtained and after the assignee had discharged the mortgage upon a small payment by the then owner of the equity of redemption. But the assignee had paid no consideration for the assignment and had not received the collateral securities, and as their non-delivery should have put the owner of the equity upon inquiry as to whether he was

dealing with the actual owner of the mortgage, it was held that he had not acquired any rights in good faith, and that the mortgagee was not estopped from foreclosing by the delay: *Fletcher v. Carpenter*, 37 M. 412.

504. A., upon the receipt of a second mortgage on the M. estate, agreed to look to it before resorting to a mortgage on the L. estate, which he subsequently discharged in consideration of a mortgage upon the N. estate. A., being enjoined from proceeding to sell the M. estate, took no steps to dissolve the injunction, and two years elapsed before the injunction suit was dismissed. Meanwhile, the M. estate had been sold on the first mortgage upon it, and the time for redemption had expired. Held, that A. could not, because of his laches, foreclose his mortgage on the N. estate: *Thompson v. Jarvis*, 39 M. 689.

3. Effect of proceedings at law or of statutory foreclosure.

505. No proceeding can be had on a bill to foreclose a mortgage, if it appear that any judgment has been obtained in a suit at law for the debt, or any part thereof, unless to an execution against the property of the defendant in such judgment the sheriff shall have returned the execution unsatisfied in whole or in part, and that defendant has no property to satisfy the execution except the mortgaged premises (H. S. § 6706): *Dennis v. Hemingway*, W. 387.

506. Where bill was filed to foreclose a mortgage given to secure the payment of three notes, and the bill stated that a judgment had been recovered on the first note, which had been nearly paid, but did not show that an execution had been issued on the judgment and returned unsatisfied in whole or in part, nor distinctly claim a decree for the amount of the other two notes only, nor waive the right to the mortgage security as to the judgment, it was held that the bill could not be maintained (H. S. § 6706): *Cooper v. Bresler*, 9 M. 534.

507. To prevent proceedings on a foreclosure bill, it is not necessary that judgment shall have been rendered on the bond or note accompanying the mortgage, but for the money for which the mortgage was given: *Dennis v. Hemingway*, W. 387.

508. Whether H. S. § 6706, as to proceedings in chancery to foreclose a mortgage where a judgment has been obtained at law for the money secured by it, applies to the case of a bill to foreclose the defendant's equity of redemption in lands which had been conveyed

to complainants by warranty deed by way of security, *quere: Maynard v. Pereault*, 30 M. 160.

509. Proving a claim that is secured by mortgage before the commissioners on an estate is not such a proceeding at law as is contemplated by H. S. § 8498, forbidding a foreclosure by advertisement while a proceeding at law is pending to recover the debt. The proceedings referred to are those in which judgment may be rendered and execution issued against the debtor's property: *Larzelere v. Starkweather*, 38 M. 96.

510. Where in a statutory foreclosure a mistake occurs which renders the proceedings irregular and voidable, the mortgagees may waive the proceedings and commence *de novo* either by advertisement or in equity: *Atwater v. Kinman*, H. 243.

511. The holder of a second mortgage began a foreclosure suit without making the prior encumbrancer a party. Pending foreclosure the first mortgage was assigned, and the assignee foreclosed at law and bid in the premises. Part of the description was left out of the foreclosure notice and omitted also from the sheriff's deed by a mistake for which the assignee was not to blame. Afterwards the holder of the second mortgage perfected his foreclosure, and he also bid in the premises. No new rights arose meanwhile. *Held*, on a bill by the assignee, that the statutory foreclosure might be set aside and a new foreclosure allowed in equity: *Vary v. Chatterton*, 50 M. 541.

(b) Defences.

As to defences by way of equitable SET-OFF, see that title, IV.

512. A release of part of mortgaged lands at the instance of the mortgager is no defence to a foreclosure of the rest if there is nothing to indicate that the release was against the rights of any of the defendants: *Botsford v. Botsford*, 49 M. 29.

513. An adverse tax-title cannot be pleaded as a defence to a purchase-money mortgage where no claim under it has been made against the mortgager: *Smith v. Fiting*, 37 M. 148.

514. Certain land that had been sold for unpaid taxes of 1856 was conveyed in 1872 with a warrant against encumbrances, and the grantees returned a purchase-money mortgage. A purchaser under the tax-title had also mortgaged the premises, and the grantees claim to have been put to expense to perfect their title in other respects. On foreclosure of the purchase-money mortgage, the existence of the adverse tax-title and the antecedent

mortgage was alleged as a defence, and the right was claimed to detain the purchase money to the extent of which damages would be recoverable upon the covenants. *Held*, that if the grantees were entitled to any such damages, they must resort to the covenants in their deed: *Ibid*.

515. It is no defence to a bill for foreclosure by the assignee of a mortgage that the assignment to him was without consideration. The mortgager has no interest in the question whether the assignment was for or without consideration, except as the want of it may enable him to make available any defence he might have had as against the mortgagee: *Adair v. Adair*, 5 M. 204.

516. The grantee of land was allowed to withhold part of the consideration for a specified time in order to take up an outstanding title, and to secure the money withheld he gave a mortgage. *Held*, that it was no defence to its foreclosure that to perfect his title he had paid the amount withheld to a person who claimed to have obtained a quitclaim of the outstanding title, when it was neither averred in the answer nor shown by the proofs that the latter claim was valid or truthful: *Richardson v. Tolman*, 44 M. 379.

517. It seems the foreclosure of a mortgage cannot be defeated by presumptions in favor of an issue made by a subsequent encumbrancer as to the assignment of the mortgage, if such encumbrancer had not relied upon the records or upon inquiry in taking an interest in the premises in suit: *Jakway v. Jenison*, 46 M. 521.

518. The good faith of a second mortgagee in taking his mortgage on the strength of a forged discharge of the former one is no defence to the foreclosure of the earlier mortgage if the holder had nothing to with deceiving the later mortgagee. And as the foreclosure is an original equity proceeding which covers all questions as to the validity and amount of the security, the question of forgery is for the court to decide and not for a jury: *Keller v. Hannah*, 52 M. 535.

519. Where a defendant in foreclosure obtains delay in the foreclosure by promising to pay the amount of the decree, both parties supposing that his title to the mortgaged land is good, he cannot, on finding it to be defective, defend against payment on that ground: *Tenney v. Hand*, 32 M. 63.

520. Proof in a foreclosure case that the note which is the basis of the proceedings does not belong to the complainant, but to other parties who use complainant's name for the purposes of the suit, does not affect the pro-

ceeding any further than to entitle defendants to the benefit of any defence they might have against the real owners: *Spear v. Hadden*, 31 M. 265.

521. Where a complainant parted with his interest in a mortgage before answer, it was held a good objection to his foreclosure suit: *Wallace v. Dunning*, 1 W. 416.

522. The fact that pending a foreclosure suit the complainant borrowed money from a third person on the mortgage on the understanding that the suit was to go on and the money be repaid with interest, if it succeeded, is no defence to the foreclosure: *Chase v. Brown*, 32 M. 225.

523. A mortgager against whom a decree in foreclosure has been taken, making him personally liable for any balance, is not precluded from contesting the validity of the decree upon the merits on an appeal, by the fact that he has parted with his title to the mortgaged premises to one who has allowed the decree to be taken by default, and has failed to appeal: *McCabe v. Farnsworth*, 27 M. 52.

524. Where a bill is filed to foreclose a mortgage conditioned for the payment of a certain sum of money, it is competent to show in defence, by parol evidence, that the mortgage was given to indemnify sureties in a recognizance of bail, and that the liability of the sureties had been discharged without their being damnified: *Colman v. Post*, 10 M. 422.

525. Though such mortgage was conditioned for the payment of a negotiable promissory note, and both mortgage and note are assigned before due to secure the assignee for procuring bail, such assignee is a *bona fide* holder for the purpose only of securing bail, and when the sureties have been discharged without being damnified, neither he nor one who takes an assignment of the note and mortgage from him after they become due is entitled to collect the amount thereof as *bona fide* holder: *Ibid*.

(c) Parties.

1. Who may foreclose or be joined as complainants.

526. Where there has been an irregular statutory foreclosure, the purchaser thereof, or his grantee, not the mortgagee, is the proper party to file a foreclosure bill in chancery: *Gilbert v. Cooley*, W. 494.

527. The grantee of the purchaser on an irregular statutory foreclosure is entitled to foreclose in equity if occasion requires: *Morse v. Byam*, 55 M. 594.

528. One holding the equitable title only to a mortgage may foreclose it in chancery: *Martin v. McReynolds*, 6 M. 70.

529. An assignee of a mortgage may sue upon it in equity in his own name where the assignors have intentionally vested him with full title and authority, and there is no conflict between them as to whether the title is absolute or in trust: *Fisher v. Meister*, 24 M. 447.

530. Where the assignee of a mortgage files a bill to foreclose it, and the court find that the assignment was taken as security only, this will not affect the complainant's right to maintain his bill on the case he has stated, but goes only to the amount of the decree: *McKinney v. Miller*, 19 M. 142.

531. Even though there has been no written assignment the assignee of a mortgage is entitled to foreclose in equity on proof of his purchase: *Cooper v. Ulmann*, W. 251; *Dougherty v. Randall*, 3 M. 581; *Martin v. McReynolds*, 6 M. 70; *Pease v. Warren*, 29 M. 9.

532. Nor need the notes secured by the mortgage be indorsed to the assignee of the mortgage to enable him to foreclose: *Pease v. Warren*, 29 M. 9.

533. A. gave to B., who had backed a note for A.'s accommodation, a mortgage on real estate to indemnify him, and on A.'s failing to pay the note at maturity B. paid it, and entered up the amount in his general account against A. as a charge against him. B. afterwards assigned the note and mortgage to C. in payment of a debt. Held, that C. was entitled to foreclose the mortgage and to take a decree for deficiency against A.: *Bendey v. Townsend*, 109 U. S. 665.

534. Where one seeks, as assignee, to foreclose a mortgage securing a non-negotiable note, but gives no evidence of title to the debt beyond the mere possession of the note, and of an assignment for certain interests which are not shown to include the debt secured, his bill must be dismissed: *Lashbrooks v. Hatheway*, 53 M. 124.

535. A widow, to whom her husband has bequeathed the life interest in a mortgage, can foreclose it without its being assigned to her by probate order as a specific legacy; it is enough that she distinctly avers her ownership, and that she acts with the assent of the remainder-man, which may be inferred from circumstances. And where the remainder-man is her co-executor his assent to her possession may be inferred likewise: *Proctor v. Robinson*, 35 M. 285.

536. W. owned the equity of redemption in land mortgaged to D., but deeded the land to B. in exchange for certain other property, and

to equalize the trade and sustain his covenant of title he agreed to pay a certain portion of the amount due on D.'s mortgage, and gave S. a mortgage on the property he received to secure this agreement. S. afterward quit-claimed the land to a third person subject to D.'s mortgage, which the grantee assumed as part of the purchase price. *Held*, that on W.'s failure to pay D. what he had agreed to pay on D.'s mortgage, S. was entitled to foreclose the later mortgage given to him to compel such payment to be made to himself: *Stuart v. Worden*, 42 M. 154.

537. A mortgage conditioned for the support of the mortgagee by the mortgager during her life-time cannot be foreclosed for the benefit of persons who had boarded the mortgagee at the mortgager's request. Such a mortgage is for the benefit of the mortgagee, and not for the benefit of those who may, at the request of the mortgager, furnish her with support: *Daniels v. Eisenlord*, 10 M. 454.

538. One who is not entitled to receive payment or grant acquittances on a mortgage or its accompanying notes, but is simply bound to release the securities when paid or otherwise discharged, is not the proper person to file a foreclosure bill: *Briggs v. Hannowald*, 85 M. 474.

539. One who, having received a deed as security for the payment of a note, has transferred the note and has subsequently received delivery of a note and mortgage running to the owners of the equity of redemption under such deed, as collateral to the debt secured by the deed, has not such an interest or title as authorizes him to file a foreclosure bill in his own name without making the holder of the original demand a party: *Ibid*.

540. A mortgage was given to three persons to secure a debt due to them jointly. Two having died, *held*, that the survivor could file a foreclosure bill alone: *Cote v. Deguindre*, W. 64.

541. The survivor of two assignees of a mortgage may foreclose it, and it is not necessary for him to join the personal representative of the deceased assignee: *Martin v. McReynolds*, 6 M. 70.

542. A trustee, holding a mortgage as such, need not make his *cestuis que trust* parties to a bill to foreclose it: *Sill v. Ketchum*, H. 428.

543. To a suit for the foreclosure of a mortgage held by a trust company, the bondholders of the company are not necessary parties; they are represented by their trustee, and are bound by the decree so long as it stands unreversed: *Richter v. Jerome*, 123 U. S. 238.

544. Partners need not be joined as com-

plainants in the foreclosure of a mortgage given to only one of the firm as trustee for the partnership: *Shelden v. Bennett*, 44 M. 634.

2. Defendants.

545. The holder of the legal title to the mortgage is a necessary party where the holder of the equitable title files a bill to foreclose: *Martin v. McReynolds*, 6 M. 70.

546. A bill to foreclose a mortgage given to secure a joint and several note is defective for want of parties if filed against only one of the makers of the note, though the mortgage was given by him only. This is especially so where the mortgage has been assigned, and if the defence to the note could only have been enforced by a joint cross-action for damages: *Dederick v. Barber*, 44 M. 19.

547. The description of premises in the mortgage was erroneous in one particular. To a bill to foreclose it and correct the error a person is not a proper party who owns lands which would be affected by the erroneous description, but who has never been owner or encumbrancer of any portion of the mortgaged premises as identified by the proofs: *Ramsdell v. Eaton*, 13 M. 117.

548. The mortgager is a necessary party to a foreclosure bill, notwithstanding the personal remedy against him is barred: *Michigan Ins. Co. v. Brown*, 11 M. 265.

549. Where no relief is sought against him personally, the mortgager is not a necessary defendant to a bill to foreclose a mortgage assumed by the grantee of the premises: *Miller v. Thompson*, 34 M. 10.

550. Adverse claimants or prior encumbrancers cannot be made parties to a foreclosure suit for the purpose of litigating their titles. The only proper parties are the mortgager and the mortgagee, and those who have acquired rights and interests under them subsequent to the mortgage: *Chamberlain v. Lyell*, 8 M. 448; *Horton v. Ingersoll*, 18 M. 409; *Farmers', etc. Bank v. Bronson*, 14 M. 361.

551. In a suit by a junior mortgagee to foreclose a mortgage, prior mortgagees are not necessary parties: *Jerome v. McCarter*, 94 U. S. 734.

552. A mortgagee who files a bill of foreclosure is not bound to bring in parties interested in the equity of redemption, unless where he has actual or constructive notice of their claims, and where he has no such notice they are barred by the foreclosure: *Woods v. Love*, 27 M. 308.

553. But where one claims an interest in

the equity of redemption, it is proper to make him a party for the purpose of foreclosing such interest, notwithstanding he also claims the land by tax-title: *Horton v. Ingersoll*, 13 M. 409; *Farmers', etc. Bank v. Bronson*, 14 M. 361.

554. Where the complainant in foreclosure dismissed his bill as against one made a party under the general allegation that he claimed some interest in the premises, as subsequent encumbrancer or otherwise, the mortgager, appealing to the supreme court from the decree in the case, cannot complain of the dismissal, since it in no respect affects his rights: *Martin v. McReynolds*, 6 M. 70.

555. One may foreclose without reference to subsequent encumbrances if he care only to reach the equity of redemption held by the party whom he has made defendant: *Avery v. Ryerson*, 34 M. 362.

556. Whether, where an assignee in bankruptcy has proceeded to decree in the federal court on a bill to foreclose a subsequent mortgage, it is competent, without permission of the bankruptcy court, to make him a defendant in a bill to foreclose a prior mortgage, so as thereby to affect his rights under the subsequent mortgage, *quere*: *Ibid*.

557. Sureties who have undertaken, not for the payment of the mortgage debt, but that the mortgager shall provide a sinking fund in certain specific securities for its payment, cannot be joined as defendants in a suit to foreclose the mortgage under H. S. § 6704: *Joy v. Jackson & M. P. R. Co.*, 11 M. 155.

558. The guarantor of the collection of a debt secured by mortgage should not be made defendant in the foreclosure: *Johnson v. Shepard*, 35 M. 115.

559. The fraudulent grantee of a title which is equitably subject to the mortgage is a proper party defendant to a suit to foreclose the mortgage: *Adams v. Bradley*, 13 M. 346.

560. The personal representatives of a deceased mortgager are not necessary parties to a suit to foreclose the mortgage against the heirs unless the personal estate is sought to be charged with any deficiency: *Abbott v. Godfroy's Heirs*, 1 M. 178.

561. The representatives of a defendant in foreclosure who died before the bill was filed need not be brought in where decedent's only interest in the mortgaged premises was a right of dower: *Miller v. Miller*, 48 M. 311.

562. The wife of a mortgager, even though she claims a homestead right in the premises, is not a necessary party to a bill to foreclose a purchase-money mortgage given by the husband alone at the time of his purchase: *Amphlett v. Hibbard*, 29 M. 293.

563. A man mortgaged an undivided two-thirds of certain land without inserting covenants of title or warranty. His wife afterwards acquired the other undivided third, to which he had no title when he gave the mortgage. *Held*, that she could not be made a defendant to a foreclosure bill: *McClure v. Holbrook*, 39 M. 42.

564. The wife of a defendant in foreclosure is properly made a party because she is interested in the question whether the mortgage was for purchase money so that its foreclosure would cut off her right of dower. But if the subpoena served on her has no underwriting to let her know the purpose of the suit, and if, in consequence, she appears and disclaims, and replication is filed to her disclaimer, she is entitled to the costs of a solicitor's fee on the dismissal of the suit as to her, and, if it is not allowed, to a solicitor's fee on appeal: *Hal-dane v. Sweet*, 55 M. 196.

565. Minors whose guardian has assigned a mortgage which he held for them are not necessary parties to a bill by the assignee to foreclose the same: *Livingston v. Jones*, H. 165.

566. Where a mortgage is made subject to a life estate already vested in a third person, or where a third person had an undivided interest in the property before the mortgage is given, a foreclosure bill should be dismissed as to them: *Pool v. Horton*, 45 M. 404.

567. A defendant in foreclosure whose connection with the mortgage or the equity of redemption is not shown by the bill is not a proper party, and is entitled, so far as he is concerned, to have the bill dismissed with costs: *Havens v. Jones*, 45 M. 253.

(d) Pleadings.

See, generally, EQUITY, V.

1. The bill.

568. A bill to foreclose a mortgage given by Alexander Eaton, junior, to O. P. Ramsdell, was filed by Orrin P. Ramsdell against Alexander Eaton. The bill was in the usual form, but contained no direct averment that the parties to the suit were identical with the parties to the mortgage. *Held*, sufficient on *pro confesso*. The question of identity would have been open to proof if disputed: *Ramsdell v. Eaton*, 12 M. 117.

569. A foreclosure bill by persons describing themselves as executors of the last will of a mortgagee cannot be sustained where it does not set out his death or in any way allude to the probate of the will: *Middleworth v. Nixon*, 2 M. 425.

570. In stating an assignment of the mortgage it is sufficient to set it forth according to its legal import and effect, without reference to its form or phraseology: *Martin v. McReynolds*, 6 M. 70.

571. It is not ground of demurrer to a foreclosure bill by an assignee that it does not give the date of the assignment of the bond and mortgage: *Sill v. Ketchum*, H. 423.

572. The averment in a foreclosure bill that the owner of a bond and mortgage assigned the same to the complainants in consideration of one dollar, and that on the same day the assignment was duly acknowledged before a commissioner of deeds according to the laws of New York, where the same was executed, is sufficient on demurrer: *Livingston v. Jones*, H. 165.

573. A foreclosure bill filed by an assignee of the mortgage stated that the mortgage was executed in May, 1839, and that the mortgagees afterwards, to wit, Feb. 25, 1839, assigned to complainant. It then stated that the assignment was acknowledged Feb. 25, 1841. Held, that the date 1839 was a clerical error, and might be rejected as surplusage: *Bailey v. Murphy*, W. 424.

574. Where a mortgagee's right to certain money depended upon the title to the premises named in the mortgage being perfected in the two particulars mentioned in the mortgage, it was held that a bill to foreclose should contain distinct averments in the stating part of the bill of the performance of the two conditions precedent. A bill in the ordinary form, as in case of a mortgage for the payment of money unconditionally, except that in stating the pretences of defendant to excuse his non-payment it states that he pretends a non-compliance by complainant with such conditions, and avers that such pretence is unfounded, is not sufficient: *Curtis v. Goodenow*, 24 M. 18.

575. Bill was filed to foreclose a mortgage, which made persons other than the mortgager parties, charging that one of them had given a prior mortgage on the same premises, which had been since paid, but caused to be assigned to one of the other defendants for the purpose of keeping it alive against complainant's mortgage; and asking that it be decreed to be satisfied; but the bill did not show any privity of title to the land between the parties to the first and the parties to the second mortgage, or what was the state of the title at any time, or any obligation on the part of the first mortgager which would entitle the second mortgager or his assigns to require him to pay or remove such first mortgage. Held, that the bill showed no title to relief as against the

parties to the first mortgage: *Wright v. Dudley*, 8 M. 115.

576. Where a foreclosure bill did not state that anything was due on the note executed with the mortgage, or state whether any proceedings had been had at law for the recovery of the debt, it was held demurrable: *Bailey v. Gould*, W. 478.

577. The allegation that the mortgage debt is due is material in a foreclosure suit; and when the answer does not admit it, any proof is receivable to disprove it which would be receivable under the general issue at the common law: *Morris v. Morris*, 5 M. 171.

578. An allegation that no part of the mortgage debt has been collected or paid, when the bill sets out fully the mortgage, and shows the amount of the several instalments, and when they became due, sufficiently shows the amount due: *Martin v. McReynolds*, 6 M. 70.

579. Where a mortgage is given to secure the sureties on an official bond, it is immaterial that a bill to foreclose it does not correctly state the date of the appointment to the office, if it correctly recites the mortgage and the breach, and the testimony makes out full ground of suit: *Shelden v. Warner*, 45 M. 633.

580. Bill by persons who had guaranteed the performance of a covenant to pay certain debts to foreclose an indemnity mortgage. They averred that they had paid on the debts \$1,000, "as they were obliged to do by the terms and legal effect" of the covenant, "on account of the default" of the covenantor. It was held that this was a sufficient statement that they had paid after their liability accrued, and that it was not necessary to set forth in the bill the particular sums paid: *Dye v. Mann*, 10 M. 291.

581. It is immaterial in such case that the payment of the debts was by part of the defendants only, and not by all jointly: *Ibid*.

582. It is unimportant that a foreclosure bill describes the premises in different terms from those used in the mortgage if the mortgage is sufficiently identified and the premises described in both are substantially the same. If either party wants a judicial settlement of the question what precise parcel the description belongs to, a proper case should be made therefor with proper proof: *Shepard v. Shepard*, 36 M. 173.

583. A foreclosure bill may properly describe the mortgaged land with accuracy even though such description varies from that in the mortgage in details that may be rejected as surplusage: *Slater v. Breese*, 36 M. 77.

584. In a foreclosure bill it is sufficient to set out the condition of the mortgage accord-

ing to its legal effect: *Jerome v. Hopkins*, 2 M. 96.

585. The general allegation in a foreclosure bill, that a defendant "has or claims to have rights and interests in the mortgaged premises as subsequent purchaser, encumbrancer or otherwise," is not sufficient to put in issue any right of such defendant which he holds paramount to the mortgage, and a disclaimer is all that is necessary to protect such rights: *Comstock v. Comstock*, 24 M. 39.

586. Whether a bankrupt's assignee can be impleaded on foreclosure as representing the bankrupt's interests as a subsequent encumbrancer, by alleging that, "as assignee of A. B. [the bankrupt], he has or claimed to have rights and interests in the premises, . . . or in some part or parts thereof, as subsequent purchaser, encumbrancer or otherwise:" *Avery v. Ryerson*, 34 M. 362.

587. Where the bill charges an instrument to be a mortgage, asks to have it foreclosed as such, and contains a prayer for other or further relief, the court may declare it to be a mortgage, although there be no special prayer for that purpose in the bill: *Abbott v. Godfrey's Heirs*, 1 M. 178.

588. A defendant in a foreclosure decree who has a residuary interest in the mortgage foreclosed after complainant's demand is satisfied may file a bill to have the benefit of that decree, and also to foreclose the mortgage against the defendants who were not, but should have been, parties to the first suit. Such a bill is not objectionable. It is an original bill as to those who were not parties to the first bill, and a supplemental bill as to those who were: *Griggs v. Detroit & M. R. Co.*, 10 M. 117.

589. A foreclosure bill that makes certain parties defendants as subsequent purchasers or encumbrancers is not multifarious in alleging that such defendants claim some adverse interest: *Wilkinson v. Green*, 34 M. 231.

590. A mortgage containing an erroneous description having been replaced by one describing the premises correctly, the mortgagee sought to foreclose it against a subsequent purchaser, but, by mistake, gave his solicitor the original instead of the corrected mortgage, and the solicitor filed a bill to correct the description and foreclose. Defendant answered, admitting his purchase under the mortgage, but averring that the mortgage had been fully paid and discharged. Complainant explained his mistake in an affidavit, and filed an amended bill setting up the new mortgage and asking for its foreclosure. The court struck the amended bill from the files. *Held*

error. Complainant was entitled to amend, and defendant having admitted the purchase subject to the mortgage was not in position to object. The second mortgage could properly be construed as given to correct the mistake in the first without destroying the identity of the debt, and to bring out the real equity which defendant must have known was the cause of action: *McMann v. Westcott*, 47 M. 177.

591. It seems that a foreclosure sale is not necessarily invalidated by neglect to re-engage the foreclosure bill after amending it by adding a new party defendant: *Carpenter v. Ingersoll*, 43 M. 438.

2. The answer; cross-bill.

And see EQUITY, V, (f), (g).

592. Where the defence to the foreclosure of a mortgage depends on new matter by way of avoidance the defendant must allege it circumstantially and prove it as alleged: *Post v. Springsted*, 49 M. 90.

593. Where a mortgage permits the mortgager to make payment before the debt falls due, at his option, he must distinctly and affirmatively elect to do so, and, if he relies upon such election in defending against a foreclosure, he must not only prove it but allege it in his answer: *Ibid*.

594. Where a foreclosure bill calls for an answer under oath, the existence and consideration of the debt and securities is put in issue, and anything is responsive that explains the transaction. The defendant is called on to answer the whole series of material averments as well as the special interrogatories, and if his answer sets up nothing in avoidance, but only refers to the transactions mentioned in the bill, the complainant is bound by it unless he can overthrow it by counter-evidence; and he has the burden of showing the consideration and genuineness of the securities: *Matteson v. Morris*, 40 M. 52.

595. A junior encumbrancer joined as defendant in foreclosure, and claiming the benefit of the doctrine of marshalling assets, should allege and establish such facts as would entitle him thereto: *Detroit Savings Bank v. Truesdail*, 38 M. 430.

596. A second mortgagee, after instituting foreclosure proceedings to which he made a subsequent mortgagee a defendant, took a quitclaim from the mortgagers and acquired the first mortgage. Whether the subsequent mortgagee, in setting up these facts as a defence, could do so in an answer, or should set

them up by plea or cross-bill, *quere: Tower v. Divine*, 37 M. 443. See *supra*, § 458.

597. A portion of the land covered by a mortgage having been conveyed subject to the payment of the entire mortgage by the grantee, the purchaser of another parcel is not obliged to file a cross-bill in the foreclosure suit to protect his rights, but may set out the facts in his answer, and the court, where it can be done without prejudice to the complainant, should make decree protecting his priority: *Caruthers v. Hall*, 10 M. 40.

598. Where a mortgagee who is himself in debt has assigned to his creditor as security the note secured by the mortgage, and then seeks to foreclose the mortgage, the creditor also can file a cross-bill to protect his equities. And on such cross-bill the mortgagee can be held personally liable to the creditor for any deficiency, even though he has not indorsed the note assigned: *Wilcox v. Allen*, 36 M. 160.

3. What evidence warranted by the pleadings; variance.

599. The allegation under chancery rule 91 that a defendant claims an interest in the mortgaged premises "as subsequent purchaser, encumbrancer or otherwise" will not entitle the complainant to show that a deed to such defendant subsequent to the mortgage, but recorded first, is fraudulent. If he claims the deed to be fraudulent he must set forth in the bill the facts which show the fraud: *Wurcherer v. Hewitt*, 10 M. 453.

600. A note given by two persons was secured by a mortgage from only one of them. The foreclosure bill described the note as given by the mortgager, but no objection was made for non-joinder, and the bill made *pro-fer* of the note and mortgage, and described the mortgage by its record. *Held*, that this was not a case of misdescription, and therefore not one of fatal variance; and the non-joinder is unimportant unless as bearing upon personal responsibility: *Botsford v. Botsford*, 49 M. 29.

601. Where a defence to a mortgage foreclosure is based on an alleged agreement between the complainant's assignor and the defendant the agreement must be clearly set out in the answer, and the proofs must show it to be a contract legally binding. Where both answer and proofs are vague such defence will fail: *Suhr v. Ellsworth*, 29 M. 57.

602. A foreclosure suit can be defended only on the grounds set up in the answer: *Higman v. Stewart*, 38 M. 513.

603. In a suit to foreclose a mortgage given

to secure an accommodation indorser, a partnership accounting between the parties cannot, if not connected with the case, be brought into it except by setting up such facts in the answer or by cross-bill as would entitle the defendant to the benefit of an equitable set-off: *Hess v. Final*, 32 M. 515.

604. The holder of one of several notes secured by a mortgage that is discharged of record, in foreclosing against the present owner of the premises can introduce proof to disturb the discharge without setting out the invalidating facts in the bill; he must show a *prima facie* title as assignee, and if the defendant relies on a discharge he must allege and prove it: *Spear v. Hadden*, 31 M. 265.

(e) What matters can be litigated.

605. Whether the title obtained by one who buys from the purchaser on statutory foreclosure after the time for redemption has expired can be passed upon in a foreclosure proceeding for a second instalment under the mortgage, *quere: Miles v. Skinner*, 42 M. 181.

606. A title obtained under a foreclosure of the first mortgage is presumptively prior in right to a subsequent mortgage, and its validity cannot be assailed in a suit to foreclose the latter without special averments showing why it ought to be postponed: *Dawson v. Danbury Bank*, 15 M. 489.

607. It is not admissible in a foreclosure suit, whatever the pleadings, to proceed to litigate and settle the right of a party who sets up a legal title, which, if valid, is adverse and paramount to the title of both mortgager and mortgagee, and if it were, a bill which simply brings in the adverse claimants under the usual allegation in foreclosure bills against subsequent purchasers and encumbrancers, *i. e.*, as claiming subordinate interests, is not properly framed to raise such an issue or to support a decree upon the title of such adverse claimants: *Summers v. Bromley*, 23 M. 125.

608. Foreclosure is not a proceeding in which to litigate the adverse and paramount title of a defendant who claims under the foreclosure of a previous mortgage from which the complainant does not seek to redeem: *Bell v. Pate*, 47 M. 468.

609. In a foreclosure suit a third person's right of dower cannot be litigated, nor she made a party: *Ligare v. Semple*, 32 M. 438.

610. The holder of a mortgage dated and recorded before a deed of the same property is entitled to treat all subsequent rights as subordinate; and on his bill of foreclosure such

rights need not be litigated: *Shelden v. Warner*, 45 M. 638.

611. Where a foreclosure bill is filed against subsequent purchasers from a grantee whose deed was not recorded until after the mortgage, complainant is not concerned with the good faith of their grantor, and need not investigate the merits of subsequent interests: *Ibid*.

612. A title that is adverse and paramount to that of both mortgager and mortgagee cannot be litigated in a foreclosure suit; but the question whether an asserted claim is such an adverse one as to come within this rule depends, not upon what is set up in the answer in regard to it, but rather upon what the bill charges and the proofs show to be its real character: *Wilkinson v. Green*, 34 M. 221.

613. Where a subsequent purchaser of land from a mortgager thereof has procured quitclaims from the mortgager's grantors for the purpose of perfecting his title of record, but under such circumstances as would make it fraudulent for him to set them up as establishing an adverse and paramount title, the mortgagee, on proper allegations in his foreclosure bill, may have such adverse title declared null: *Ibid*.

(f) *Publication; absent, etc., defendants.*

As to affidavits for orders of publication and of publication, see EQUITY, IX.

614. Where a defendant is brought in by publication, the question of the validity of the subpoena which was prematurely returned not served is unimportant: *Torrans v. Hicks*, 33 M. 307.

615. Two things only are required by H. S. § 6685 of non-resident defendants to entitle them to appear and defend in mortgage cases: appearance before the premises are sold under a decree, and payment of such costs as the court shall direct. The costs only are discretionary with the court: *Bailey v. Murphy*, W. 305.

616. H. S. § 6685 extends to all non-resident defendants and makes no distinction between mortgagers and subsequent encumbrancers: *Ibid*.

617. A non-resident defendant was let in to defend by answer after a sale had been made, the sale being ordered to stand until final hearing. *Held*, that the case admitted of all rights of defence which might be established by answer, including that of redemption: *Stone v. Welling*, 14 M. 514.

618. Upon a default by a defendant brought

in by publication there can be no decree without proofs; and the complainant should also be sworn as to payments: *Brown v. Thompson*, 29 M. 72.

619. In foreclosure against a non-resident brought in by publication complainant failed to offer testimony or to be sworn as to payments made on the mortgage. *Held*, that such failure did not oust the court of jurisdiction to pronounce a decree, and could not be collaterally made use of: *Colton v. Rupert*, 60 M. 318.

620. A non-resident mortgager who accepts after foreclosure sale the surplus due him, and who takes no steps to have the proceedings set aside within the time allowed by law, waives all irregularities and sanctions the validity of such proceedings: *Ibid*.

(g) *Evidence; burden of proof; production of the securities; reference.*

See, also, EQUITY, X, XI, (e).

621. Foreclosure by assignee. The mortgagee was sworn as a witness and testified that the mortgage was made to him and assigned to complainant at the request of one of the mortgagers, without any consideration moving from or to him for the mortgage or assignment. *Held*, that this evidence cast upon complainant the burden of proof to show a consideration for the mortgage: *Bishop v. Felch*, 7 M. 371.

622. The burden of proving fraud alleged as a defence to a mortgage is on the mortgager: *Perrett v. Yarsdorfer*, 37 M. 596.

623. Where a foreclosure case is tried on a bill and cross-bill, and the defendant, on information and belief, alleges in the cross-bill that the amount called for in the original bill is too much, it is for the defence to prove the allegation if opportunity is given. If no proof is offered the complainant is not obliged to tender evidence to disprove it: *Johnson v. Van Velsor*, 43 M. 208.

624. The defendant in a suit to foreclose a mortgage has the burden of proving that the consideration therefor was less than appears therein if complainant claims that amount, and it is against him if his own theory of computation is as favorable to complainant as to himself: *Wiswall v. Ayres*, 51 M. 324.

625. The burden of showing that the amount due on a mortgage under foreclosure is less than the amount secured or than what remained unpaid on balance of accounts is on the defendant: *Lyon v. McDonald*, 51 M. 436.

626. The rule that on foreclosure defendant has the burden of showing that the debt has been paid will be relaxed where the debtor has confided in the creditor and placed himself in his hands, and for ten years neither debtor nor creditor has taken any notice of the debt, and the evidence relating to it has become uncertain and conflicting: *Lashbrooks v. Hatheway*, 52 M. 124.

627. Where a mortgager is an employee of the mortgagee, and the latter's agent keeps the accounts, and it is understood that moneys coming through him to the mortgager are to be applied on the mortgage, the mortgagee, to entitle himself to a decree on foreclosure, must make a clear case and a full exposition of the accounts, especially if several years have been allowed to pass without attempting to enforce payment, or to secure it except by labor: *Webber v. Ryan*, 54 M. 70.

628. Complainant must produce the mortgage and the accompanying securities, if any, or must adequately excuse non-production, and show that they are still in force: *Bailey v. Gould*, W. 478; *Bassett v. Hathaway*, 9 M. 28; *Young v. McKee*, 13 M. 552; *Hungerford v. Smith*, 84 M. 800; *Mickle v. Maxfield*, 42 M. 804; *George v. Ludlow*, 66 M. 176 (June 9, '87).

629. Where a case was contested on the sole ground that the mortgage and notes were of no original validity, and they were not put on file, the supreme court declined to reverse the decree for complainant on that ground, but required them to be produced and filed, or their absence accounted for by affidavit, before affirming it: *Young v. McKee*, 13 M. 552.

630. On a bill to foreclose a mortgage given to secure a note, it was held that the law did not raise a presumption of non-payment, but of payment, when due, unless the contrary was shown by the production of the note, or evidence accounting for it: *Bailey v. Gould*, W. 478; *George v. Ludlow*, 66 M. 176 (June 9, '87).

631. A very strong showing of the continuing obligation of a mortgage should be required, if the securities cannot be produced, where the mortgager is dead, and the defendant is an alleged subsequent purchaser, and nearly twenty years have passed since the debt matured: *Hungerford v. Smith*, 84 M. 800.

632. Where the notes secured by a mortgage were missing, and a foreclosure decree was allowed upon the theory that they were still in existence, complainant was required to indemnify defendant against their enforcement in case they re-appeared in the hands of strangers: *Yerkes v. Blodgett*, 48 M. 211.

633. The court may dispense with a reference to compute the amount due in a foreclosure case, and make its own computation if it sees fit: *Ireland v. Woolman*, 15 M. 258; *Vaughn v. Nims*, 36 M. 297.

Further as to references, see EQUITY, XI, (e).

(h) *Receivers.*

634. Since the passage of the statute prohibiting the mortgagee from bringing ejectment, it is questionable whether a clause in a mortgage which gives the mortgagee, in case of default, the right to take possession, in person or by attorney, of the mortgaged lands, and to operate, or cause to be operated, the works and mines thereon, can be carried into effect by the appointment of a receiver; it certainly cannot be done until after default, which, unless admitted, could not be determined on a motion to appoint a receiver: *Beecher v. Marquette & P. R. Co.*, 40 M. 307.

635. And a neglect to apply for a receiver within a reasonable time, to take possession of mortgaged premises, is construed as a waiver of the right to make the application: *Brown v. Chase*, W. 43.

636. Under the practice existing when the mortgagee of real estate had a possessory right, equity would not interfere to grant a receiver unless the premises were scanty security and the mortgager was insolvent: *Brown v. Chase*, W. 43; *Hazeltine v. Granger*, 44 M. 503, 505.

637. The court cannot make an *ex parte* order appointing a receiver to take possession of real estate under foreclosure, even though the parties themselves agree thereto by the terms of the mortgage: *Hazeltine v. Granger*, 44 M. 503.

638. The mortgager being entitled to possession until his title is divested by complete foreclosure, a receiver cannot be appointed in the foreclosure suit to take charge of, harvest and market a growing crop of wheat and to apply the proceeds on the mortgage debt: *Wagar v. Stone*, 36 M. 364.

(i) *Decree.*

As to decrees generally, see EQUITY, XII.

1. Form; what may include.

639. One of the defendants in a foreclosure decree, who had a residuary interest in the mortgage foreclosed after complainant's demand should be satisfied, filed a bill, the object of which was to have the benefit of that decree, and also to foreclose the mortgage

against parties who were not but should have been parties to the first suit. A decree was made in the case, in the ordinary form of foreclosure decrees, and it was *held* not objectionable, it appearing that since the original decree payments had come due as well on the mortgage as on complainant's debt secured by it: *Griggs v. Detroit & M. R. Co.*, 10 M. 117.

640. The ordinary allegations of a foreclosure bill do not authorize a decree declaring chattels upon the mortgaged premises to belong to the realty: *Crippen v. Morrison*, 13 M. 23.

641. Where by mistake a decree directed a sale of mortgaged premises in two years and three months, when complainant was entitled to take his decree for a sale in one year and three months from the filing of the bill, a correction was directed: *Bates v. Garrison*, H. 221.

642. It is the practice on foreclosure to allow a reasonable time for payment, definitely fixed by the decree: *Detroit Savings Bank v. Truesdail*, 38 M. 480.

643. In the foreclosure of a mortgage drawn for a larger sum than the debt it secures, recovery should be confined to the correct sum: *Laylin v. Knox*, 41 M. 40.

644. A mortgage for \$3,000 covering various property contained a stipulation that when \$2,000 should be paid the mortgagee was to release a certain portion of the premises mortgaged; \$1,000 was paid and nearly all the rest of the premises was released, but it afterwards became necessary to foreclose. *Held*, that the foreclosure could not be limited to \$1,000, as the security on the premises that had not been released had not been confined to \$2,000, nor had the mortgage provided for a release in any case in which it would be necessary to foreclose: *Vary v. Chatterton*, 50 M. 541.

645. Where a mortgager has made a tender of payment which was not accepted and which he had not kept good, and the mortgage afterwards tendered a conveyance and demanded payment, it was decreed on foreclosure that the mortgager pay the principal of his debt with simple interest to the time of payment, less the period that intervened between the dates of the tender and of the mortgagee's subsequent offer to reconvey; and that the mortgager's costs of both courts be deducted: *Ferguson v. Popp*, 43 M. 115.

646. The mortgage covered two parcels of land. A defendant answered, claiming one of them by paramount title, and disclaiming as to the other, and as to the last a decree was

taken. It was *held* that the bill should have been dismissed as to this defendant with costs, as he was under the necessity of appearing and answering to protect his interest in the parcel claimed by him: *Gregory v. Stanton*, 13 M. 61.

647. Where a mortgagee has taken a tax-title for the purpose of protecting the mortgage, it is proper in decreeing payment on foreclosure to provide that, on payment of the cost of the tax-title with suitable interest, the certificate of the tax purchaser shall be assigned to defendant: *Baker v. Clark*, 53 M. 22.

648. Where in a foreclosure suit a settlement is made between complainant and one or more defendants, and by written stipulation filed in the cause the controversy is adjusted as to a portion of the premises so that it is not to be affected by the decree, the court has no jurisdiction to make a decree affecting such portion; and if the decree made covers it, the master's deed purporting to convey it would, at least as to persons aware of the facts, be void: *Thayer v. McGee*, 20 M. 195.

649. A grantee took a warranty deed of the premises from grantors whose title was defective, and on the strength of it he obtained from others for next to nothing some quitclaims by which his title was perfected. The property had been mortgaged, but he had assumed the mortgage and reserved from the purchase price enough to pay it. Both mortgage and deed purported to cover the whole title. *Held*, that on foreclosure it was not inequitable that the decree also should cover the whole title, including the interests which had been quitclaimed: *Taylor v. Whitmore*, 35 M. 97.

650. Upon a bill filed to foreclose a mortgage payable in instalments at a time when only one instalment had become due and remained unpaid, and which seeks a foreclosure for that payment only, the decree cannot include other instalments not due when the bill was filed and concerning which no issue was made: *Smith v. Osborn*, 33 M. 410.

651. It is proper to include in the decree a sum which has fallen due on the mortgage since the commencement of suit and which remained unpaid: *Howe v. Lemon*, 37 M. 164.

652. The decree on foreclosure may properly cover all amounts due at the date when it is granted, even though there has to be a new inquiry into any instalments that accrue after decree: *Vaughn v. Nims*, 36 M. 297.

653. Foreclosure decree is given for everything due when it is granted, though suit was begun when only an instalment of the debt

had matured: *Johnson v. Van Velsor*, 43 M. 208.

654. Where a mortgage securing two notes is foreclosed before one of them has fallen due its amount may nevertheless be included in the decree if it falls due before the decree is rendered: *Hanford v. Robertson*, 47 M. 100.

655. A decree that directed land mortgaged as a whole to be sold in separate undivided interests, each to satisfy the same principal, with interest at different rates, was set aside: *Spear v. Hadden*, 81 M. 265.

When decree may include taxes, see *supra*, §§ 246, 250.

That decree cannot include stipulated attorney fee, see *supra*, §§ 170, 171.

2. Personal decrees for deficiency.

As to proceedings for execution, see *infra*, §§ 779-799.

656. Under the original equitable jurisdiction, and prior to the act of April 23, 1883, there was no power to make a personal decree against even the mortgager. His personal obligation could be enforced only in a suit at law: *Johnson v. Shepard*, 35 M. 115.

657. Such a decree is a statutory innovation, as is also the enforcement, on foreclosure, of collateral obligations of third persons. But the statutory jurisdiction over this latter class of persons is permissive only, and not obligatory, and will not be enforced to their prejudice: *Ibid.*; *Gage v. Jenkinson*, 58 M. 169.

658. If a mortgage is collateral to any actual personal obligation, however shaped, that could be enforced at law, it may be enforced in foreclosure proceedings and a personal decree obtained, and if the mortgager dies his estate is liable for the deficiency: *Shelden v. Warner's Estate*, 59 M. 444.

659. There may be a personal decree for deficiency after sale against a subsequent grantee of mortgaged premises who has assumed the mortgage, if he has been made a party and is found in the jurisdiction: *Crawford v. Edwards*, 33 M. 354; *Miller v. Thompson*, 34 M. 10; *Taylor v. Whitmore*, 35 M. 97; *Carley v. Fox*, 38 M. 387; *Winans v. Wilkie*, 41 M. 264; *Booth v. Connecticut Mutual Life Ins. Co.*, 43 M. 299; *Unger v. Smith*, 44 M. 22; *Canfield v. Shear*, 49 M. 313.

Further as to assumption of mortgage, see *supra*, VI, (b).

660. A man and his wife conveyed certain lands in consideration of the payment, by the grantees, of the husband's debts. The grantees gave back a written agreement to the wife that the lands should be reconveyed to her

alone on repayment of their advances. This agreement purported to make the wife covenant to pay the advances, but she did not sign it. The transaction was conceded to be a mortgage. *Held*, that under H. S. § 5650, declaring that no mortgage shall be construed as implying a covenant for the payment of the sum secured thereby, the wife could not be held personally liable for any deficiency on foreclosure sale: *Howe v. Lemon*, 87 M. 164.

661. In foreclosing a lien for redemption from a statutory foreclosure, no personal decree can be made against the original mortgagers for any deficiency, as the lien is confined to the land, and does not revive their personal liability extinguished by such foreclosure: *Powers v. Golden Lumber Co.*, 43 M. 468.

662. Absolute personal decrees against parties claimed to be collaterally liable for a mortgage debt cannot be granted in the original foreclosure decree: *Johnson v. Shepard*, 35 M. 115; *Vaughan v. Black*, 63 M. 215.

663. Where an absolute personal decree for the deficiency on foreclosure has been granted in the first instance against guarantors of the collection of the mortgage debt, they are not in default in not asking a bill of review, so long as the proper proceedings to fix them finally are not yet begun: *Johnson v. Shepard*, 35 M. 115.

664. It is only where a personal decree is sought against sureties or other persons than the mortgager that a personal decree must be based on some written obligation (H. S. § 6704): *Shelden v. Warner's Estate*, 59 M. 444.

665. Where the right of action for a debt is barred, there can be no personal decree on foreclosure of the mortgage that secures it: *Michigan Ins. Co. v. Brown*, 11 M. 265; *Baent v. Kennicutt*, 57 M. 268.

666. If the bill is filed to foreclose a mortgage against a non-resident mortgager, who does not appear, a personal decree cannot be made against him for any deficiency that may remain after sale: *Lawrence v. Fellows*, W. 468.

667. No personal decree can be rendered against a defendant brought in by publication but who was not served with process and has not appeared: *Innes v. Stewart*, 36 M. 235.

668. No personal decree can be made against parties not personally served within the jurisdiction where the land lies, or not submitting voluntarily by appearance: *Outhwile v. Porter*, 18 M. 533; *Booth v. Connecticut Mut. L. Ins. Co.*, 43 M. 299.

669. Complainant in foreclosure is a stranger to any agreement binding an infant de-

fendant to the other defendants, or to any settlement of accounts between them, and cannot sue upon such an agreement or settlement in order to obtain a personal decree against the infant for a deficiency: *Wood v. Truax*, 39 M. 623.

3. Validity and effect; conclusiveness.

See, also, *EQUITY*, XII, (b), (c).

670. A decree of foreclosure rendered during the infancy of a *feme covert* who did not come of age until the time for appeal expired was held absolutely void as to her: *Chandler v. McKinney*, 6 M. 217.

671. A decree in foreclosure against minor defendants rendered upon stipulation with their guardian *ad litem* waiving irregularities, notices and time to make answer, and allowing decree to be taken at once without answer, is void for want of jurisdiction: *Taylor v. McConnell*, 53 M. 587.

See *EQUITY*, §§ 1298-1300.

672. Where a decree in a foreclosure suit refuses to determine the priority of right between the mortgagee and a defendant claiming under a deed alleged by him to be paramount to the mortgage, it is in effect a dismissal of the bill as to such defendant: *Comstock v. Comstock*, 24 M. 39.

673. A recorded mortgage is not cut off by foreclosure sale under a subsequent mortgage so long as no party to the foreclosure suit had, or seemed or was supposed to have, any right or interest in the other mortgage or any power or control over it. It still remains an incumbrance and a foundation for redemption: *Avery v. Ryerson*, 34 M. 362.

674. A. held a second mortgage on one parcel, which also covered additional lands over which it was prior to an encumbrance held by the party claiming the first parcel under the first mortgage, the last mentioned mortgage was foreclosed; A. being made a party to the suit under the general allegation that he held or claimed some interest in the premises, etc. Held, that he had a right to treat this averment as relating only to his interest which was subject to the mortgage being foreclosed, and that his further interest would not be affected by the decree in that suit: *Dawson v. Danbury Bank*, 15 M. 489.

675. Where, after sale of mortgaged premises, the personal residue of the decree in foreclosure was sold and assigned as a decree for less than the amount adjudged due, and a note secured by the mortgage, but not yet due

and not included in the decree, was sold also, the vendor was held not liable to refund the purchase price received by him as for a total failure of consideration, on the ground that the personal decree was invalid for failure of personal service; the assignment would transfer the note and the mortgage debt with authority to enforce it by all appropriate remedies, and if there was any failure of consideration it was only partial: *Lillibridge v. Tregent*, 30 M. 105.

676. Where one is made defendant in a foreclosure suit, who is holder of both a second mortgage on the lands and a chattel mortgage of fixtures, the decree in the usual form will bar his rights under the mortgage of the lands, but will leave his chattel mortgage unaffected: *Crippen v. Morrison*, 13 M. 23.

677. Where it does not appear that a defendant in foreclosure had attended the reference for the computation or the amount due on the mortgage, he is nevertheless barred by the decree in foreclosure from suing the complainant to recover back money alleged to have been paid the complainant to apply on the mortgage, but which he claims had not been so applied. It is presumable that he had notice, where the subsequent proceedings imply that the reference had gone on regularly; and the determination of the exact amount due on the mortgage involves the determination of the precise amount of any payments, and these questions are finally adjudicated by a decree in foreclosure: *Hazen v. Reed*, 30 M. 331.

678. A defendant in ejectment cannot go behind or call in question an absolute decree of foreclosure against him to introduce defences that were open to him, if at all, in the proceedings in equity, but which he did not then rely on: *Adams v. Cameron*, 40 M. 506.

679. A decree in foreclosure merges the obligation and security and determines conclusively the amount of the debt: *Wallace v. Field*, 56 M. 8; *Haldane v. Sweet*, 58 M. 429.

680. Equities which, if they existed, were proper subjects for adjudication in a foreclosure suit, and which formed part and parcel of the security which was therein enforced, passed by the foreclosure sale if not excepted from it: *Richter v. Jerome*, 123 U. S. 233.

681. The assignment of a note and mortgage after beginning foreclosure cannot affect the decree or sale thereunder if it neither appears of record nor is brought to the knowledge of the court: *Bigelow v. Booth*, 39 M. 622.

(j) *Sale.*

1. When may be made; notice.

682. Whether or not H. S. § 6701 strictly requires a year's interval between the service of subpoena and sale in foreclosure, its purpose is certainly to give the mortgager time to make payment and save the lands, and that purpose is not served by allowing a sale within six months after he first has notice that a bill has been filed, even though it has been on file for six months previous; the court has discretion to postpone the sale until the expiration of a year from service of subpoena: *Detroit F. & M. Ins. Co. v. Renz*, 38 M. 298.

683. The one year and six weeks that must elapse before the sale on foreclosure may be computed from the date of taking out the subpoena, if it is taken out with the intention in good faith of serving it as soon as possible, and there is no laches in obtaining service: *Culver v. McKeown*, 43 M. 322.

684. A foreclosure sale cannot be allowed to take place within less than a year from the time when all defendants have been properly brought in: *Burt v. Thomas*, 49 M. 462.

685. Where a party brought in by an amended bill as defendant in foreclosure is charged with a personal liability, the year allowed before foreclosure sale should run from the date of filing the amended bill: *Canfield v. Shear*, 49 M. 313.

686. A foreclosure sale is illegal if made without a notice to defendants before the date fixed by the decree for the payment, in default of which sale may be made: *Shier v. Prentis*, 55 M. 175.

687. Direction in decree that notice of sale be given "according to the course and practice of the court" intends same notice as on sheriff's sale and is sufficiently clear: *Ireland v. Woolman*, 15 M. 253. Notice need not be personal: *Sanford v. Haines*, 71 M. —.

688. Where a sale that has been duly advertised is put off until another time, with a notification to those in attendance that it will be thus held open, a second formal advertisement of it is not needed to make it valid if it takes place at the adjourned date: *Isbell v. Kenyon*, 33 M. 63.

689. The omission to state in an advertisement of a mortgage sale that only an undivided portion will be offered instead of the entire parcel is not a jurisdictional defect that can be objected to in a collateral proceeding, but an irregularity that should be complained

of in the same case: *Brown v. Phillips*, 40 M. 264.

690. The right of defendant in foreclosure to all the time the decree allows him for making payment cannot be presumed waived in order to sustain a sale prematurely made without notice to him: *Shier v. Prentis*, 55 M. 175.

691. Whether the practice of beginning publication before default in payment as provided by the decree is permissible, *quere*: *Perrien v. Fetters*, 35 M. 232.

692. An affidavit which shows publication in a daily newspaper "once in each week for seven successive times," and gives the date of the first publication, is not sufficient to prove compliance with the requirement that publication be made once in each week for six successive weeks: *Ibid*.

693. Defects in the printer's affidavit of the due publication of notice of a foreclosure sale are not cured by the fact that the officer who conducted the sale has stated in his report thereof that due publication was had of the notice of sale: *Ibid*.

694. Due notice of sale is indispensable in foreclosure cases, and is a step in the nature of execution. Strict proof of it should always be made and put on record, and this should be unambiguous on its face: *Ibid*.

695. An affidavit of publication annexed to a report of sale under a foreclosure decree and therein referred to must be considered as proof of the facts therein stated: *Ibid*.

696. Regularity is presumed in foreclosure proceedings if the reverse is not shown: *Rugles v. First National Bank*, 43 M. 192.

2. Method and order of sale.

As to marshalling securities, see, also, *supra*, VI, (c).

697. Sale on foreclosure in equity may be made as an entirety or in parcels, as the court may think most likely to bring the highest price: *Macomb v. Prentis*, 57 M. 225.

698. A decree allowing a sale as an entirety will not be disturbed for that reason where the land was originally described as one lot, and there is no showing that it should be sold in parcels: *Vaughn v. Nims*, 36 M. 297.

699. Land mortgaged as a whole cannot on foreclosure be sold in separate undivided interests: *Dalrymple v. Sheehan*, 20 M. 224; *Spear v. Hadden*, 31 M. 265.

700. Where there are several notes falling due at different times, the fact that one note becomes due first will not, of itself, give it a preference over the rest, where the mortgaged

premises are insufficient to pay the whole: *Cooper v. Ulmann*, W. 251.

701. Where several notes of the same date but falling due at different times are secured by one mortgage, a foreclosure decree cannot give priority to any of them: *Wilcox v. Allen*, 36 M. 160.

702. On foreclosure of simultaneous mortgages a ratable application of the proceeds of the sales thereunder should be decreed if there is not enough to pay both: *Van Aken v. Gleason*, 34 M. 477.

703. Where nothing appears to show the propriety of any other disposition, a sale of mortgaged premises should be made in the inverse order of their alienation or encumbrance by the mortgager: *Mason v. Payne*, W. 459; *Cooper v. Bigly*, 13 M. 463; *Ireland v. Woolman*, 15 M. 253; *McKinney v. Miller*, 19 M. 142; *Payne v. Avery*, 21 M. 524; *Sibley v. Baker*, 23 M. 312.

704. In marshalling securities covering several parcels, the land may be sold in such order as will best carry out the principles of equity: *Dalrymple v. Sheehan*, 20 M. 224.

705. Where a part of the mortgaged premises has been aliened by the mortgager subsequent to the mortgage, the rule in equity, on a foreclosure and sale, is to require that part of the premises in which the mortgager has not parted with the equity of redemption to be first sold, and then, if necessary, that which has been aliened: *Mason v. Payne*, W. 459.

706. Where a portion of the land covered by a mortgage is conveyed subject to the payment of the entire mortgage by the grantee, the subsequent purchaser of another parcel has a right to insist that the parcel so before conveyed shall be first sold to satisfy the mortgage before resort is had to the parcel so purchased by himself: *Caruthers v. Hall*, 10 M. 40.

707. An exception of the mortgage from the covenants of warranty contained in a subsequent deed of the lands could not affect the grantee's equitable rights in reference to the order of sale of the property covered by said mortgage: *Cooper v. Bigly*, 13 M. 463.

708. A man gave two promissory notes, dated alike and secured by a mortgage, though one of them was also secured by surety. Held, on foreclosure, that the one secured by the mortgage only must be first satisfied before the proceeds of a sale of the land could be applied to the payment of the other: *Hanford v. Robertson*, 47 M. 100.

709. Where part of mortgaged premises is covered by a second mortgage held by complainant in foreclosure and another part by a

third mortgage held by a defendant, the latter cannot complain that the foreclosure decree provides for the sale first of the parcel covered by the second mortgage, but requires the sale of that parcel to be subject to the payment of the second mortgage: *Slater v. Breece*, 36 M. 77.

3. Who may purchase; rights of purchasers.

710. One who has received the mortgage title to lands under an arrangement which, in legal effect, makes his rights no more than those of a mortgagee, is not thereby precluded from becoming a purchaser at a chancery sale on the foreclosure by a third person of another mortgage, and holding the title like any other purchaser; and such a purchase would cut off all previous equities of the other party: *Moote v. Scriven*, 33 M. 500.

711. A mortgager's wife who has joined in the mortgage to release her dower loses her original right by foreclosure, and has as good a right as any one to buy in the property from the foreclosure purchaser after the foreclosure becomes absolute: *Gantz v. Toles*, 40 M. 725.

712. The purchaser under a defective sale becomes vested with complainant's rights in the mortgage: *Richards v. Morton*, 18 M. 255. See *infra*, §§ 874-878.

713. Every one will be conclusively presumed to understand that bidders at a chancery foreclosure sale stand on equal terms: *Ledyard v. Phillips*, 32 M. 18.

714. A mortgagee as purchaser under a foreclosure sale stands in the same position as any other purchaser: *Hogsett v. Ellis*, 17 M. 351.

715. At a foreclosure sale the complainant has the same rights, in bidding, as any third person, and takes the same interest if he becomes a purchaser: *Ledyard v. Phillips*, 47 M. 305.

716. An agreement whereby the mortgager transfers to the mortgagee all the crops growing on the mortgaged premises, except enough to pay for harvesting and other running expenses, does not preclude the mortgagee, in case he becomes the purchaser on foreclosure, from taking the entire interest sold under the mortgage, without any reservations in the mortgager's favor: *Ibid*.

717. A foreclosure deed to the mortgagee gives him the same estate as a foreclosure of the equity of redemption, and is as effective as against the owner of the equity as if executed by such owner: *Ruggles v. First National Bank*, 43 M. 192.

718. H. S. § 6708, declaring that the commissioner's deed in a mortgage sale shall be an entire bar against the mortgager and mortgagee, does not mean to give the purchaser title by barring the true owner, when neither mortgager nor mortgagee had any title: *Summers v. Bromley*, 28 M. 125.

719. Title by foreclosure dates from the giving of the mortgage and not from the completion of the foreclosure: *Gamble v. Horr*, 40 M. 562.

720. The title of a purchaser on valid foreclosure of a mortgage regularly recorded relates back to the delivery of the mortgage as against all intervening purchasers and encumbrancers who are made parties or who become interested *pendente lite*: *Ruggles v. First National Bank*, 43 M. 192.

721. A foreclosure purchaser of land which was mortgaged with the consent of the contract purchaser is entitled to possession as against the latter, and the grantee of the purchaser on foreclosure is equally entitled to possession so far as relates to all matters preceding the sale: *Ketchum v. Robinson*, 48 M. 618.

722. The purchaser at a foreclosure sale in chancery becomes the owner of the crops then growing on the premises: *Scriven v. Moote*, 36 M. 64; *Ledyard v. Phillips*, 47 M. 305.

723. Growing crops pass with the soil under foreclosure deed, and on proper application the court may perhaps provide for their preservation until possession is given to the purchaser: *Ruggles v. First National Bank*, 43 M. 192.

724. The confirmation of a foreclosure sale covering growing crops relates back to the sale, and entitles the purchaser to control the crops from that time if no equities prevent, and after due notice to interested parties: *Ibid.*

725. The mortgager of land cannot claim crops growing on it at the time of foreclosure sale, on the strength merely of an alleged parol agreement with the purchaser, who before foreclosure held an execution title to the land, that the latter would reconvey on payment of his advances with interest; even a mortgagee, unless estopped, could buy in the title and hold it like any other purchaser, and any previous equities would be cut off by the sale: *Scriven v. Moote*, 36 M. 64.

726. Where a mortgager, under an order of court, and as a condition to the granting of an injunction against proceedings by a foreclosure purchaser to get possession, gives a bond conditioned to prosecute his bill to redeem to final decree; and, if the decree should be adverse, to pay a fair rental value for the

premises, and to pay all taxes and all legal costs, and not to commit waste, it cannot operate, in the absence of any showing of an acceptance of the bond by the obligee, or of any action taken or claim made under it, to deprive the purchaser of any of his substantial rights in the premises or the crops growing thereon: *Ibid.*

727. The purchaser of land at a foreclosure sale may file a bill to compel the foreclosure of a prior mortgage upon that and other property, and to have the other property first sold; and if, pending the suit, the prior mortgagee purchases the interest of the complainant, he may file an original bill, in the nature of a supplemental bill, setting up the change of title, and is entitled to the same relief that could have been had under the original bill: *Cooper v. Bigly*, 18 M. 463.

728. An agreement between a complainant and defendant in foreclosure by which the former is to bid in the premises and convey them to the latter for the amount of his claim does not preclude any other person interested from paying the decree and defeating the arrangement: *Detroit Savings Bank v. Truesdail*, 38 M. 430.

729. A mortgagee's title by purchase on foreclosure cannot be attacked under a tax-title by one who has indemnified him against such title: *Wyman v. Baer*, 46 M. 418.

4. Report; confirmation.

730. An error in reciting the date of a foreclosure decree in the commissioner's report of sale is immaterial where the record furnishes the means of correcting it: *Ruggles v. First National Bank of Centreville*, 43 M. 192.

731. It is not good practice, in directing the correction of a commissioner's report of a foreclosure sale, to order that on filing the corrected report "the said sale be and the same is hereby in all respects confirmed." But it does not make the proceedings void: *Ibid.*

732. No right becomes fixed in the purchaser until the sale becomes absolute by confirmation: *Demaray v. Little*, 17 M. 386.

733. Our statutes do not dispense with the practice of obtaining an order confirming sales: *Ibid.*

734. A foreclosure sale cannot be made absolute so long as objections duly taken to the report of the commissioner have not been passed on: *Howard v. Bond*, 42 M. 131.

735. A purchaser on foreclosure cannot demand possession until the commissioner's report of sale is confirmed: *Ibid.*

736. A decree of foreclosure was granted and sale made in 1861 to a third party. In 1866, five weeks after the mortgagor's death, and without making his representatives parties, a report of sale was filed, an order nisi of confirmation entered, and conveyance made by the commissioner who had made the sale. In an action of ejectment the court was equally divided upon the question whether title passed under the sale: *Hochgraeff v. Hendrie*, 66 M. 556 (July 7, '97).

737. An order allowing a writ of assistance, and reciting that the defendant had been served with a certified copy of the order confirming the report of sale, will not, of itself, amount to an order of confirmation: *Richards v. Morton*, 18 M. 255.

738. The usual order nisi is a sufficient order of confirmation in a chancery foreclosure sale, if any order is needed where the defendant has not appeared: *Torrans v. Hicks*, 93 M. 307.

5. Setting aside sale.

739. Defendants seeking to set aside a sale in a foreclosure case must move promptly after they become aware of the facts of which they complain: *Lyons v. Branson*, 48 M. 194.

740. A party claiming to be aggrieved by a sale in chancery which has been duly confirmed will not be relieved on an allegation of irregularity in the sale, where there is unreasonable delay in applying for relief, and it is not clearly shown that he has a substantial and meritorious ground of complaint: *Goodwin v. Burns*, 21 M. 211.

741. A sale was made January 28th and confirmed April 18th. Another sale, upon another mortgage of the same property, was made January 21st, and confirmed February 1st, all in the same year. The party complaining knew of the sales at or about the time they took place, and he had knowledge of all the facts on which his claim for relief was based in June. In October he filed his petition to set the sales aside. *Held* too late. *Ibid*.

742. Petition being filed to set aside a sale under a decree in chancery on the ground of inadequate consideration, and the complainant—who was the purchaser—not having sought to take advantage of petitioner's embarrassments, and not appearing to have been at any time unwilling to receive the amount due upon the decree and the amount paid to redeem from prior sales, and to transfer to petitioner all rights acquired by the purchase, it was *held* that, under these circumstances at least, it was a fatal objection to the petition

that it did not offer to pay the decree, or to increase the bid if a resale was ordered: *Leonard v. Taylor*, 12 M. 398.

743. A foreclosure sale may properly be reopened for want of notice of the order for sale, or of the confirmation thereof, and for gross inadequacy of price, especially if the petitioner for a re-sale gives bonds to produce a purchaser at a higher price: *Nugent v. Nugent*, 54 M. 557.

744. Where a mortgagee is the purchaser on foreclosure, and the sale is objected to for inadequacy of price, objections to re-opening it are open to scrutiny: *Ibid*.

745. A much stronger case must be made to set aside the sale after confirmation of report of sale than before: *Bullard v. Green*, 10 M. 268.

746. On application to set aside a sale the court cannot inquire into the regularity of the proceedings resulting in the decree, nor whether the decree was for a greater or less sum than it should have been: *Ibid*.

747. The sale will not be set aside on the ground of surprise when the surprise springs from the negligence and inattention of the party himself who complains of it: *Ibid*.

748. A sale at \$350 will not be set aside on the ground of inadequacy of consideration when the petition states the premises to be worth \$700, and the evidence is that they have since been sold by the purchaser at that price on long time, but that for cash they would not sell for over \$400: *Ibid*.

749. Nor, if the inadequacy of price was sufficient, would it be set aside on a petition presented six months after the sale, and which does not sufficiently excuse this delay: *Ibid*.

750. A foreclosure sale in chancery will not be set aside on the ground of surprise and inadequate consideration, after a long unexcused delay, which has continued until an execution has been issued for a deficiency, and a sale made under which third persons have acquired vested interests, and the complainant has made payments to redeem from former sales: *Leonard v. Taylor*, 12 M. 398.

751. Sale set aside on the ground of surprise where defendant had obtained an agreement from complainant to postpone it, upon which he relied, but the instructions to postpone were not received by the solicitor in season, and the sale was made at much less than the value: *Demaray v. Little*, 19 M. 244.

752. Resale ordered on condition that the bid of the purchaser be advanced to a specified sum, and that he be paid the amount with interest and counsel fee. A bid was obtained

on the resale for the sum specified, but the amount actually paid was only sufficient to satisfy the first purchaser; payment of the balance being delayed by consent of the mortgager until confirmation of sale. *Held*, that this delay was no ground for setting aside the second sale: *Ibid*.

753. A mortgagee who bids off land at a foreclosure sale upon a decree granted him for the amount due, and who, having prior encumbrances thereon, pays more than the amount due under the decree, supposing that the surplus will be returned to him to apply on his prior encumbrances, but who gives out at the sale that whoever purchases must take the land subject to these prior encumbrances, has no equities that will support his application to have his purchase set aside on the ground that he has been misled as to his right to have the surplus money returned to him: *Ledyard v. Phillips*, 32 M. 18.

754. Transfer of a bid made on foreclosure sale will not be ground for ordering a new sale: *Culver v. McKewen*, 43 M. 322.

755. Where a foreclosure sale was so managed that advantage was taken of the absence of one who had a lien on a portion of the land, and who had no notice of the proceedings, and the remainder of the land, though it would have abundantly satisfied the whole debt, was bid in at nominal prices, and the portion on which he had a lien was bid in at its full value in order to cut off his equities, it was *held* that equity would relieve, and that the sale should be re-opened on petition of the encumbrancer upon his compliance with proper terms, as by giving security that on a resale he would bid for the parcels first charged with the satisfaction of the demand a sum equal to its amount, and repay to the foreclosure purchaser all sums spent by him in improving the land since its purchase, less a reasonable rent for that time: *Gilbert v. Haire*, 43 M. 283.

756. A foreclosure was had for an instalment of interest. The owner of the equity of redemption disputed the validity of the proceedings and filed a bill to have them annulled. While this bill was pending the owner of the mortgage foreclosed by advertisement for the principal. The owner of the equity when the second foreclosure was begun filed his supplemental bill, setting up a tender in full of the mortgage. The foreclosure proceedings nevertheless went on to a sale. The chancery court having found the tender, *held*, that it was proper to set aside the foreclosure proceedings with costs to complainant; and that, in the absence of any tender, the court

had full jurisdiction to dispose of the whole controversy, and if the owner of the mortgage disregarded the equity suit and proceeded to a sale, the sale must be subject to the final decree of the court: *Louder v. Burch*, 47 M. 109.

757. The equities must be clear and strong to warrant setting aside a chancery sale at the instance of a purchaser on the ground of misapprehension of his rights, where the premises sold were farming lands, and the amount bid was large, and the next highest bid was within one hundred dollars of that on which the premises were struck off, and was made with full knowledge, and where, therefore, the probabilities of serious loss are great if the sale should be re-opened: *Ledyard v. Phillips*, 32 M. 18.

758. One who attacks a judicial sale as invalid after strangers have acquired rights under it must do so by some original proceeding in which an issue can be formed and tried in the ordinary way and the persons concerned brought in as parties. And this applies to a motion to set aside a foreclosure sale after complainant's death and after a stranger has occupied the land: *Crawford v. Tuller*, 35 M. 57.

759. Notice of a motion to set aside a foreclosure sale should be given to strangers who have acquired rights in the premises under such sale: *Lawrence v. Jarvis*, 36 M. 281.

760. An order setting aside a foreclosure sale and opening the case cannot be made without bringing in such third persons as have acquired rights under the sale: *Jewett v. Morris*, 41 M. 689.

761. A foreclosure sale ought not to be set aside on merely disposing of the plea to the bill of review filed to set it aside: *Thomas v. Burt*, 52 M. 489.

762. Where a purchaser at a chancery foreclosure sale takes possession of the premises, pays laborers for work done thereon at the time of the sale, and makes arrangements and advances money to have a wheat crop sown for the following year, he so far affirms the sale as to preclude himself from insisting that it is still inchoate, and that an order granted afterward for opening it is therefore discretionary and not subject to appeal: *Ledyard v. Phillips*, 32 M. 18.

763. Re-opening a foreclosure sale is so far within the discretion of the lower court that the supreme court is not disposed to disturb an order permitting it, where the discretion has not been abused: *Nugent v. Nugent*, 54 M. 557.

6. Surplus moneys.

764. Where a third mortgagee, at the prior foreclosure of a second mortgage, bids a sum greater than the amount due on the decree in such foreclosure, the surplus is to be paid into court and to be applied on some one of the securities on the proper petition being presented: *Sibley v. Baker*, 23 M. 312.

765. The fact that a mortgagee who has assigned his mortgage has indorsed one of the notes secured by it in blank, and the other without recourse, does not affect the equal security afforded by the mortgage to the notes *pro rata*. The sum realized from a foreclosure sale, therefore, should be applied upon the *pro rata* principle, and such indorser need pay only his proportionate share of any deficiency, instead of paying the whole amount of the note indorsed in blank: *English v. Carney*, 25 M. 178.

766. The surplus arising from a foreclosure sale was claimed by the mortgager's divorced wife and by an execution creditor. *Held*, that, as the record did not show the cause of divorce, the nature of the wife's interest could not be ascertained, and the supreme court could not award the surplus: *Bowles v. Hoard*, 71 M. — (July 11, '88).

767. An assignee of a second mortgage who took it with notice of its invalidity, and who is unable to produce it or the accompanying note, or give any proof of its validity, cannot claim the surplus realized on the foreclosure of the first mortgage: *Kent v. Mellus*, 69 M. 71 (March 2, '88).

768. A levy of execution on the mortgaged lands, made at a time when the mortgager (and judgment debtor) had no title to it, and not followed by any sale by virtue of it, will not entitle the judgment creditor to the surplus moneys after foreclosure, notwithstanding the mortgager, pending the foreclosure proceedings, became vested with the title to the land subject to the mortgage: *Smith v. Smith*, 13 M. 258.

769. All the parties to a foreclosure suit are entitled to notice of an application for surplus moneys after foreclosure and sale, that they may appear and contest the right of the applicant and assert their own; and an order for the payment of the moneys to the petitioner without such notice, or the appearance of the parties, is erroneous: *Ibid*.

770. If the owner of the equity of redemption dies after sale the surplus moneys are personal estate; and his personal representa-

tives should be made parties to a petition to obtain them: *Ibid*.

771. In distributing the surplus received from a foreclosure sale of a homestead exceeding \$1,500 in value and incapable of division, a mortgage of the homestead interest is entitled to be paid before anything is applied on antecedent levies: *Vermont Savings Bank v. Elliott*, 53 M. 256.

772. A., who held a mortgage under circumstances that made him B.'s trustee, brought a foreclosure suit. *Held*, that the owner of the equity of redemption could not, in such suit, be heard to assert that the money to be derived from the sale should be secured in some way for B.'s benefit; that the matter was not germane to the suit: *Nugent v. Nugent*, 50 M. 377.

773. Bill by the mortgagee, who had become purchaser at foreclosure sale at a sum exceeding the amount due on the decree, to be relieved from payment of the surplus on the ground that he was equitable owner of the fee, and that the bids had been run up by fraudulent combination. Bill dismissed as not supported by the proofs: *Buchoz v. Walker*, 19 M. 294.

(k) Proceedings for further decrees upon instalments.

774. When a decree is for the payment of a sum by instalments, a sale cannot be ordered for default in paying one of them until an opportunity has been afforded the party to contest the alleged default, and a decree upon one hearing will not authorize a sale for a subsequent instalment, without a new hearing and adjudication: *Perkins v. Perkins*, 16 M. 162.

775. Where after decree in a foreclosure suit another instalment falls due on the mortgage, and a petition is presented under H. S. § 8714 for a further order of sale, the petition should set forth briefly all the facts necessary to enable the mortgager, as well as the court, to understand its object: *Albany City Bank v. Stevens*, W. 6.

776. A copy of the petition for a further decree upon an additional instalment due, with notice of the time of presentation to the court, must be served on the mortgager, or if it cannot be served personally by reason of his absence from the state, it should be served on his solicitor: *Ibid*.

777. The proceeding for a further decree upon an additional instalment due upon a

mortgage after payment of a prior decree is essentially a new suit in all except form, and notice must be given to every person whose interests are to be affected as in the original suit (correcting the *dictum* in *Albany Bank v. Stevens*, W. 6, to the effect that a copy of the petition for a further decree on an additional instalment need not be served on defendants made parties as subsequent encumbrancers), and the rights of the parties can only be fixed by proofs as in other cases: *Brown v. Thompson*, 29 M. 72.

778. Where a mortgage is payable in instalments, each is so far separate from the rest that in a foreclosure suit upon an instalment a payment before decree of the amount due ends the suit (H. S. § 6711), and it is only by virtue of § 6712 that such a payment after decree does not have the same effect: *Ibid*.

(l) *Proceedings to collect deficiency.*

779. Complainant has ten years after decree within which to take out an execution for deficiency: *Wallace v. Field*, 56 M. 8.

780. The proceeding for execution is substantially a new one, equivalent to the legal process of *scire facias*. It cannot be sought against persons not properly charged in the bill, and it cannot be adjudicated except upon the occasion of a deficiency reported. Parties not properly charged have every defence open to them, and they are not called on to defend unless cited: *Vaughan v. Black*, 68 M. 215.

781. The setting forth of a personal liability in the decree is always provisional, and until a deficiency arises and the defendants are called in to answer for it, they are not bound to pay it even if responsible: *Powers v. Golden Lumber Co.*, 48 M. 468.

782. Execution is not to be awarded in a decree for sale on foreclosure so long as it is not known that there will be a deficiency: *Howe v. Lemon*, 87 M. 164.

783. Where a foreclosure decree provides for the sale of land, there is no personal liability to be enforced against defendant until after it is sold and a deficiency reported: *Mickle v. Maxfield*, 42 M. 304.

784. An execution for deficiency cannot issue without special application to the court, in writing and verified, showing the right thereto: *Ibid*; *Gies v. Green*, 42 M. 107; *Ransom v. Sutherland*, 46 M. 489; *Wallace v. Field*, 56 M. 8.

785. Guarantors of collection who have not

objected to being joined as defendants in foreclosure are not precluded from a hearing before execution issues on a contingent decree against them: *Johnson v. Shepard*, 85 M. 116.

786. Notice of a petition for an execution to enforce collection of a deficiency on foreclosure must be given to defendant: *Gies v. Green*, 42 M. 107; *McCrickett v. Wilson*, 50 M. 518.

787. An application for the issue of an execution for deficiency must be served, wherever practicable, on the defendant against whom the relief is sought, and notice must be given him of the time when the application will be presented; if personal service cannot be had, the court may direct substituted service on a showing of the facts: *Ransom v. Sutherland*, 46 M. 489.

788. The answer to a petition for execution for deficiency must state the grounds of objection thereto, and must be verified and filed: *Ibid*; *Wallace v. Field*, 56 M. 8.

789. If an answer to an application for an execution for deficiency on foreclosure presents matter of discharge, complainant may take issue on it by replication if necessary, and in proper cases the court may order a reference to take proofs: *Ransom v. Sutherland*, 46 M. 489; *Wallace v. Field*, 56 M. 8.

790. An application for such execution can be resisted only on grounds that are consistent with the decree and such as usually operate in its discharge: *Ibid*.

791. A decree of foreclosure and the commissioner's report of a deficiency on the sale establish a *prima facie* case for the issue of execution for such deficiency: *Wallace v. Field*, 56 M. 8.

792. A decree in foreclosure adjudging defendant personally liable for a deficiency, taken together with the report of the deficiency, make out a *prima facie* case against him, and on resisting an application for an execution against him he has the burden of showing matter in discharge of the decree: *Ransom v. Sutherland*, 46 M. 489.

793. In resisting the issue of execution for deficiency defendant cannot attack the validity or regularity of the foreclosure proceedings, nor treat the order confirming the sale as void, so long as it has been set aside: *Wallace v. Field*, 56 M. 8.

794. No objections can be made to the issue of execution for a deficiency unless they arose after confirmation of the foreclosure sale and recognize the decree and go to its discharge: *Haldane v. Sweet*, 58 M. 429.

795. Proceedings for execution for the deficiency on foreclosure are new and supplementary and not merely in continuation of the foreclosure; and any dealing between the creditor and the principal debtor which substantially changes their contract relations would release a guarantor of collection, if entered into before their liability was finally settled, and would also be a defence to proceedings for execution: *Johnson v. Shepard*, 35 M. 115.

796. Where persons interested in a chancery foreclosure sale interfere to prevent a fair sale to the highest bidder, as by arranging with persons intending to bid, to protect their interests, whereby such persons are deterred from bidding, they are estopped from claiming a deficiency on the sale, and will be enjoined from proceeding at law to recover it: *Innes v. Stewart*, 36 M. 285.

797. A bank foreclosed a mortgage on some mill property and obtained a decree for sale. In order that the property might be leased and made profitable as soon as possible, the mortgager's assignee, believing that nothing could be realized beyond the debt, proposed to the bank to anticipate the date fixed for the foreclosure sale, provided he could be sure of a bid high enough to cover expenses. The bank promised to bid, and at the sale the property was bought in its interest, subject to the mortgage. It was afterward sold, however, under the foreclosure decree at a sum much below the mortgage debt, and the bank thereupon notified the assignee that payment of the deficiency would be claimed out of the assets which he held. On his petition an order was made satisfying the decree by the property sold, and on appeal this order was affirmed on the ground that, in arranging with the bank to anticipate the sale, the assignee was left to suppose that the bank, by taking title, would have no further claim against him: *East Saginaw Savings Bank v. Grant*, 41 M. 101.

798. For a case where the court sustained a bill to restrain collection of a deficiency, as in fraud of an agreement, see *Smith v. Smith*, 46 M. 301.

799. Proceedings to collect a deficiency on foreclosure are purely statutory, and a petition to set them aside for want of notice is permissible without filing a bill of review: *McCrickett v. Wilson*, 50 M. 518.

800. The refusal of the court to issue execution to enforce payment of a deficiency arising on a foreclosure sale concludes the proceedings in the case, and a subsequent order for leave to bring a suit at law upon the note is unauthorized: *Shields v. Riopelle*, 63 M. 453.

XI. FORECLOSURE BY ADVERTISEMENT.

As to redemption, see *infra*, XII, (c).

(a) *Generally; when appropriate or allowable; who can foreclose.*

801. The statutory provisions for foreclosure are to be treated as a part of every mortgage with a power of sale executed under the statute; and the sale under the power is a distinct exercise of authority under the terms of the contract: *Hoffman v. Harrington*, 38 M. 392.

802. The statutory proceeding, being *ex parte*, must conform in all matters to the conditions expressed by the legislature: *Lee v. Mason*, 10 M. 403.

803. Foreclosure by advertisement must comply substantially with statutory requirements: *Grover v. Fox*, 36 M. 461; *Miller v. Clark*, 56 M. 337.

804. And those who conduct the foreclosure must observe good faith and pay a proper regard to the interests of all who may be affected by the proceedings; and no defect or misstep in matters of substance will be cured or excused by any proof that it happened by mistake and was not induced by a bad purpose: *Grover v. Fox*, 36 M. 461.

805. Statutory foreclosures are matters of contract authorized by the mortgager, and ought not to be hampered by an unreasonably strict construction of the law: *Lee v. Clary*, 38 M. 233.

806. H. S. § 6498, forbidding the beginning of a statutory foreclosure if any "suit or proceeding shall have been instituted at law to recover the debt," etc., refers to suits on the debt, and not to previous foreclosure proceedings: *Ibid.* Or to having proved the debt before commissioners: *Larzelere v. Starkweather*, 38 M. 96.

807. Foreclosure is not barred by the existence of another mortgage as prior security: *Connerton v. Millar*, 41 M. 608.

808. A release of a parcel of land from a mortgage does not defeat the right to sell the rest of the mortgaged premises under a power of sale: *Durm v. Fish*, 46 M. 812.

809. A mortgage was assigned by an indorsement which merely referred to it as "the within mortgage," and this was recorded in the same volume but not on the same page with the mortgage itself, the register, in recording it, connecting the two by cross-references. *Held*, that this was a valid record, and that the assignee could foreclose: *Soule v. Corbley*, 65 M. 109.

810. The mortgage assignments which

H. S. § 8498 requires to be recorded before the mortgage can be foreclosed at law are those only that are voluntary; such transfers as result from the operation of law need not be recorded. The executor or administrator of an owner of a mortgage can therefore execute the power of sale as owner of the legal title therein: *Miller v. Clark*, 56 M. 337.

811. The right to foreclose by advertisement is confined to mortgages containing a power of sale: *Doyle v. Howard*, 16 M. 261, 264; *Hebert v. Bulte*, 42 M. 489.

812. Whether, if a trustee's mortgage is valid as an equitable charge, it is capable of statutory foreclosure, as there can be no legal power of sale, seems doubtful: *Weaver v. Van Aken*, 71 M. — (June 22, '88).

813. It seems that equity will not interfere to prevent a foreclosure and sale of the whole premises for a single instalment: *Disbrow v. Jones*, H. 48.

814. A foreclosure by advertisement of mortgages given simultaneously cannot settle the relative rights of the mortgagees or of the foreclosure purchasers. A bill in equity is necessary for this and to marshal the assets: *Van Aken v. Gleason*, 34 M. 477.

815. Under H. S. § 8498, a mortgage payable in instalments stands upon the same basis as to foreclosure as if each instalment were secured by a separate and independent mortgage, neither having priority over any others, and a foreclosure under the power of sale for an instalment simply is entirely unsuited to the enforcement of the respective liens or the adjustment of the respective interests: *McCurdy v. Clark*, 27 M. 445.

816. Statutory foreclosure is not allowable in cases where there are conflicting equities that can only be worked out and protected in a court of chancery, as where the ownership of the security is so uncertain that the value of the equity of redemption must be greatly depreciated by permitting a foreclosure at law. So held where, after the legal title to a note and the record title to the mortgage by which it was secured had passed out of the creditor's hands by assignment and delivery, and his assignee had again assigned them to one who had previously bought the mortgaged premises, the original creditor had again assigned an interest which he still claimed in the mortgage, and the assignee had sought to foreclose against the purchaser of the land: *Olcott v. Crittenden*, 68 M. 230 (Jan. 19, '88).

817. Under H. S. § 8498, where several distinct payments or notes are secured by the same mortgage, no one of them has any preference over the others in consequence of its

falling due sooner; but all, whether held by the same or different persons, have equal claim to be paid ratably out of the land: *English v. Carney*, 25 M. 178; *McCurdy v. Clark*, 27 M. 445.

818. Where a purchaser on foreclosure, by way of keeping good his lien during the period of redemption, pays taxes and insurance which, under the mortgage, the mortgager himself was bound to pay, he cannot, when further instalments fall due, again resort to the power of sale for the purpose of securing repayment: *Walton v. Hollywood*, 47 M. 385.

819. H. S. § 8498, by which the lien of a mortgage is preserved for successive foreclosures by advertisement for instalments of the debt as they fall due, would not, it seems, apply where title was obtained by a foreclosure on default in the payment of interest on a note, and the sale was not made subject to the principal debt: *Miles v. Skinner*, 43 M. 181.

820. An assignment pending the foreclosure proceedings puts an end to them, and a sale afterwards made under an advertisement in the name of the assignor does not cut off the equity of redemption: *Niles v. Ransford*, 1 M. 338.

821. None but the legal holder of a mortgage — the legal owner of the debt secured is such holder — can foreclose by advertisement; he can foreclose for the benefit of any one interested: *Lee v. Clary*, 38 M. 228.

(b) Notice of sale.

As to printer's fees for publication, see COSTS, § 162.

822. The notice of a statutory foreclosure must conform to the statutory requisites; but if it contains all that the statute requires it will not be void for errors in other respects which are not misleading: *Reading v. Waterman*, 46 M. 107.

823. The notice cannot be held void for not containing what the statute does not require: *Lee v. Clary*, 38 M. 228.

824. It need not state the commencement and discontinuance of previous foreclosure proceedings: *Ibid*.

825. Nor need it state the hour and minute when the mortgage was recorded: *Ibid*.

826. It is not bad for misstating the date of the mortgage if it accurately refers to the record, thereby giving the means of correction: *Reading v. Waterman*, 46 M. 107.

827. Nor is the notice void, though erroneously dated, if published for the proper time and giving the proper time and place of sale: *Ibid*.

828. The notice must purport to emanate from the owner of the legal title to the mortgage: *Niles v. Ransford*, 1 M. 338; *Lee v. Clary*, 38 M. 223.

829. If the notice purports to be signed by the party foreclosing, it is not fatally defective for being signed in the wrong name; if the true name is specified in the body of the notice, the party is not required to sign it: *Michigan State Ins. Co. v. Soule*, 51 M. 312.

830. Nor is the notice bad for calling the mortgagee "Dixon" instead of "Dickson," where it otherwise identifies the mortgage by date and parties: *Reading v. Waterman*, 46 M. 107.

831. But if the notice does not give the mortgager's name the sale will be void: *Lee v. Clary*, 38 M. 223.

832. A sale under a mortgage given by a married woman — her husband joining therein — upon her own land is not void because the notice of sale describes her as his wife: *Yale v. Stevenson*, 58 M. 537.

833. A notice which states that the premises will be sold, "or so much thereof as may be necessary," is in the usual and proper form, and is not objectionable as not designating the precise parcels to be sold; and if it describes the land in two government subdivisions it is presumptively desirable to sell them separately, though if they are in one connected estate it may be proper to sell them together; and the expression "I will sell" in a notice signed by the mortgagee does not preclude the sheriff from making the sale: *Snyder v. Hemmingway*, 47 M. 549.

834. Two mortgages, one of which contains land not covered by the other, cannot be combined in one advertisement and all the land be sold on one bid and for a gross sum: *Morse v. Byam*, 55 M. 594.

835. A notice of twelve weeks, excluding the day of the first publication and including the day of sale, is sufficient: *Gantz v. Toles*, 40 M. 725.

836. The notice must be published not merely twelve times, once a week, but once a week for twelve successive weeks; and a sale is invalid if made on a notice which, although published twelve times in separate weeks, provided for selling on a day less than twelve weeks from the first publication: *Bacon v. Kennedy*, 56 M. 329.

837. An affidavit of publication which states that the newspaper in which the notice was published was printed and published weekly and every week, and that the publication was for thirteen successive weeks, the first being Nov. 26, 1879, and the last Feb.

18, 1880, is explicit that the notice was published once in each week: *Snyder v. Hemmingway* 47 M. 549.

838. A statutory foreclosure is not invalidated by a change in the name of the newspaper in which the foreclosure advertisement is published, and by the removal of the publication office to another place in the same county, if the paper otherwise preserved its identity: *Perkins v. Keller*, 48 M. 53.

839. In ejectment by a purchaser on foreclosure the original affidavit of publication showed that the notice of sale was insufficient, but another affidavit was produced, correcting the first, and the publisher gave evidence tending to show that the sale was regularly advertised, and that the original affidavit was incorrect. *Held*, that the testimony was admissible, but that it was for the jury to pass on, and could not be treated as conclusive by the court: *Wyman v. Baer*, 46 M. 418.

840. An affidavit of publication of notice of sale, made between seven and eight years after the sale took place, was *held* not presumptive evidence of the facts therein stated, under R. S. 1883, p. 501, § 9: *Mundy v. Monroe*, 1 M. 68.

841. Notice of a foreclosure sale is indispensable to its validity, and as it is the act of the party, and not of the officer making the sale, the presumption of the performance of official duty does not apply for the purpose of making out a valid foreclosure without actual proof of notice: *Sinclair v. Learned*, 51 M. 335.

842. If the notice of sale is insufficient the consequence will be the continuance of the right of redemption until foreclosure by lapse of time or in equity: *State Bank v. Chapelle*, 40 M. 447.

(c) Sales.

1. In general.

843. The sheriff may sell though the notice of sale says that the mortgagee will sell: *Snyder v. Hemmingway*, 47 M. 549.

844. A sheriff's deputy may sell on foreclosure by advertisement: *Heinmiller v. Hatheway*, 60 M. 391.

845. Under H. S. § 8503, if the premises consist of several parcels not adjoining each other, the sale of the parcels must be separate, and the deed given in pursuance of the sale must show the price at which each parcel was sold: *Lee v. Mason*, 10 M. 403.

846. A foreclosure sale by advertisement is void if one advertisement is made to cover

two mortgages in which the descriptions were not identical, and if both parcels are sold on one bid and for one gross sum: *Morse v. Byam*, 55 M. 594.

847. Mortgaged premises may be sold as a single parcel where they were so mortgaged, even though they have been since subdivided by the mortgager but without the mortgagee's concurrence; but where the parties have joined in obtaining the release of a parcel so situated as to leave the rest in distinct parcels and thus affect the security, the sale is void if not made in parcels: *Durm v. Fish*, 46 M. 312.

848. A mortgage sale of several lots which were fenced and used as one parcel when the mortgage was given and had continued so was not void under C. L. (1871) § 6918 (see H. S. § 8506): *Yale v. Stevenson*, 56 M. 587.

849. Where a foreclosure sale is made in parcels, the power of sale is exhausted when enough parcels have been sold to satisfy the mortgage debt and all costs and expenses, and it then affords no authority to make further sales of the remaining parcels: *Grover v. Fox*, 86 M. 461.

850. Whether, where mortgaged premises are made up of contiguous parcels occupied together as a single farm, a sale in parcels is essential to a valid foreclosure, *quere*: *Ibid*.

851. A foreclosure sale cannot stand as a valid sale in bulk, if, having been made in parcels, it is incapable of being sustained as a sale in parcels; a sale must be contemplated as it was: *Ibid*.

852. H. S. § 8506, providing that, where mortgaged premises consist of distinct farms, tracts or lots, they shall be sold separately, does not apply to a tract divided by a highway or by section lines, but occupied as one farm and mortgaged in one parcel: *Larzelere v. Starkweather*, 88 M. 96.

853. The requirement that a foreclosure sale be made in parcels is in the redemptioner's interest and for the protection of his right to redeem each parcel separately; but where, for a valuable consideration, one has waived his right to redeem, in advance, he cannot object that sale was not made in parcels; the objection cannot be raised by the mortgagee as against his own proceedings, when no one else is in position to raise it: *Clark v. Stilson*, 86 M. 482.

854. Sale is to be made in the inverse order of alienation or encumbrance of the parcels: *Sager v. Tupper*, 35 M. 134.

855. One who joins in a mortgage of his own and of another's property to secure the other's debt is entitled to have the other's

lands sold first to satisfy the debt: *Carley v. Fox*, 86 M. 387.

856. If a bidder at a statutory foreclosure sale withdraws his offer while the other bidders are still present, the sale should be re-opened, especially if some other person promises a higher bid: *Miller v. Miller*, 48 M. 311.

857. H. S. ch. 298, contemplates that every opportunity shall be given to bidders so that premises may be sold at the best price obtainable, and to that end authorizes the sale to be postponed from time to time. And it does not contemplate legal proceedings to enforce payment of a bid if the bidder is irresponsible or refuses to pay it. The sale should be re-opened: *Ibid*.

858. Subsequent purchasers cannot resist the re-opening of a mortgage sale if the successful bidder takes back his offer immediately after acceptance, and while competing bidders are still present: *Ibid*.

859. A sheriff has no right to execute deeds to purchasers on foreclosure if he has previously, to the knowledge of competing bidders, sent a notice of the re-opening and postponement of the sale for publication: *Ibid*.

860. A foreclosure having taken place by advertisement, and land having been struck off for the amount claimed to be due, which included a considerable sum not allowable as costs, and the owner of the mortgage having become the purchaser without paying to the officer making the sale the amount of the bid less what was legally demandable, *held*, that the same was incomplete, and that he could not claim title under it: *Louder v. Burch*, 47 M. 109.

861. A statutory foreclosure sale is not necessarily invalid because the mortgagee claimed in his notice of sale an attorney's fee to which he was not legally entitled, and made the purchase for a sum which included such fee: *Millard v. Truax*, 47 M. 251, 50 M. 343; *Kennedy v. Brown*, 50 M. 336.

Further as to attorneys' fees, see *supra*, §§ 170-181.

862. In the absence of any averment or proof on the subject it is not a presumption of law that the mortgagee making such a purchase did not pay over to the officer any surplus to which the mortgager would be lawfully entitled. Therefore it cannot be presumed that he retained any illegal allowance which had been claimed by him: *Millard v. Truax*, 47 M. 251.

863. A mortgage sale is not necessarily invalid for being made for more than was in fact due; the excessive claim becomes important only when it is attempted to redeem from

the sale, and its importance depends upon its magnitude or apparent want of good faith: *Millard v. Truax*, 50 M. 348.

864. Inadequacy of price cannot vitiate a statutory foreclosure sale otherwise fair and regular; for the owner of the equity of redemption cannot be prejudiced thereby, since he may always redeem within the year by refunding the amount paid, with interest at the rate fixed by the statute: *Cameron v. Adams*, 31 M. 426.

865. A foreclosure sale for instalments due on a mortgage is not presumed to have been made subject to other instalments: *Millard v. Truax*, 50 M. 348.

866. Part payments on a mortgage, made after foreclosure by advertisement, and received with the clear understanding that the redemption was to be completed by paying the whole sum necessary for that purpose within the year allowed by the statute, are in affirmance and not in avoidance of the sale, and their acceptance does not operate as a waiver of the foreclosure: *Cameron v. Adams*, 31 M. 426.

2. Surplus moneys.

867. The burden of proof is not upon the party claiming under a statutory foreclosure to show that he made payment after the sale of the surplus over the amount due: *Damon v. Deves*, 62 M. 465.

868. Where, upon a foreclosure sale, the mortgagee bids in the property for a greater amount than that for which the lien exists, the surplus is due at once to the owner of the equity of redemption: *Kennedy v. Brown*, 50 M. 336; *Millard v. Truax*, 50 M. 348.

869. Non-payment by the sheriff to the mortgager of the surplus received on foreclosure sale does not defeat the sale, for the sheriff must account for the money to the mortgager even though he fails to obtain it, and if the mortgager redeems without getting it he still has an unquestionable right to have it taken into account: *Sinclair v. Learned*, 51 M. 335.

870. In the absence of fraud or oppression the mere failure to pay over the proper surplus to the officer who makes the sale — the amount of an illegal attorney fee being retained — does not render the sale ineffectual to pass the title if no steps are taken to redeem: *Damon v. Deves*, 62 M. 465.

871. A mortgagee who, on foreclosure, bids off the premises at a sum exceeding the debt and legal charges is estopped, at least in the absence of evidence, from claiming that he did

not have to bid the surplus sum to obtain the land, and he cannot repudiate that part of his bid as fictitious. Nor can he deny that he is liable for the surplus to the owner of the equity of redemption on the ground that he has not paid it over to the sheriff for the latter's benefit: *Kennedy v. Brown*, 50 M. 336.

872. H. S. § 8510 provides that on foreclosure sale any claimant to the surplus may file his claim with the officer making sale, and that a reference to a commissioner to take proofs may be ordered by the court. *Held*, that — apart from any question as to the validity of this statute — a petition for such reference is fatally defective if it does not establish a *prima facie* right to a part of the surplus; and it does not do this if it does not show how the parties cited are related to the mortgaged lands. And in the proceedings before the commissioner all parties interested in the equity of redemption must have notice so that they may produce any defence that they have: *Allen v. Wayne Circuit Judges*, 57 M. 196.

3. Rights of purchasers.

873. A mortgager in possession under color of title is presumed in the absence of evidence to the contrary to be owner of the inheritance, and a purchaser on valid foreclosure acquires the same interest which he holds: *Wyman v. Baer*, 46 M. 418.

874. Void proceedings having been taken to foreclose a mortgage, and the holder of the mortgage having bid in the premises, he afterwards sold them and gave a warranty deed thereof. It was *held* that this deed conveyed his mortgage interest in the lands: *Niles v. Ransford*, 1 M. 336.

875. Although a statutory foreclosure be irregular, so as to be no bar to the equity of redemption, yet the purchaser succeeds to all the interest of the mortgagee: *Gilbert v. Cooley*, W. 494; *Hoffman v. Harrington*, 33 M. 392.

876. Including, in the case of a mortgage executed prior to 1843, the right of possession: *Hoffman v. Harrington*, 33 M. 392.

877. A purchaser under a defective foreclosure of a mortgage made since 1843 is only in the position of a mortgagee, and can only recover possession by new foreclosure proceedings: *Nims v. Sherman*, 43 M. 45.

878. The rights of the grantees of a purchaser at an irregular foreclosure are simply those of a mortgagee: *Morse v. Byam*, 55 M. 594.

879. Under R. S. 1838, p. 501, ch. 8, and

until the enactment of H. S. § 8498, a foreclosure sale by advertisement of mortgaged premises for one of several instalments, unless made subject to the lien of the other instalments, forever freed the premises from the mortgage: *Kimmell v. Willard's Administrators*, 1 D. 217.

880. *Semble*, that a mortgagee might protect himself against such consequence of a statute foreclosure for one of several instalments, either by bidding off the premises for the whole sum secured by the mortgage, or by having them exposed to sale, charged expressly with the payment of the future instalments: *Ibid*.

881. Where one who forecloses for one of several instalments owing upon his mortgage sells subject to the other instalments, the purchaser takes the land charged with the payment of the subsequent instalments: *McCurdy v. Clark*, 27 M. 445.

882. Where one who forecloses for a single instalment upon his mortgage neglects to sell subject to the other instalments, his foreclosure may bar the equity of redemption of the mortgager, and of subsequent purchasers and incumbrancers, but, as between him and the purchaser at the sale, the latter has purchased only an instalment of the mortgage, and the remaining instalments retain their relative positions; a subsequent foreclosure for another instalment would do nothing toward an adjustment of the respective interests of the parties; if each bid off the whole land neither would become owner of any particular part of it or of any definite undivided interest in it, but each would still have a lien, which, though foreclosed as to those holding subordinate rights, would remain, as to the other, a mere lien; neither could redeem from the other, and neither could gain or lose precedence or position by the foreclosure sale: *Ibid*.

883. In foreclosing by advertisement a mortgage securing separate notes, the mortgagee can preserve his lien for subsequent foreclosures by selling the premises subject to the payment of the principal indebtedness; if he sells them discharged from further incumbrance he can depend on the mortgagor's personal liability: *Miles v. Skinner*, 42 M. 181.

884. Where a foreclosure by advertisement for the first instalment due on a mortgage and for interest on the other instalments has become absolute, and the land has been bid off and not redeemed, the mortgagor's wife may, with her own money, buy it from the purchaser on foreclosure, and if the sale was not made subject to succeeding instalments, she acquires full title: *Ibid*.

885. Where a mortgage is foreclosed for an instalment only it remains in force as to notes secured by subsequent instalments; and indorsers of such notes may look to the security for indemnity if called on to pay them: *Bridgman v. Johnson*, 44 M. 491.

886. A purchaser of real estate at a statutory mortgage sale acquires an inchoate title, subject to be defeated by redemption; and when his title becomes absolute by the failure to redeem, it relates back to the time of the purchase: *Stout v. Keyes*, 2 D. 184.

4. Proof of foreclosure and sale.

887. Parties claiming under a purchase at a mortgage sale need not, in support of their title, produce the note secured by the mortgage: *Snyder v. Hemmingway*, 47 M. 549.

888. But the mortgage and the power of sale must be proved: *Hebert v. Bulte*, 42 M. 489; *Snyder v. Hemmingway*, 47 M. 549.

889. And the sheriff's deed is not of itself evidence of a regular foreclosure: *Barman v. Carhartt*, 10 M. 388; *Hebert v. Bulte*, 42 M. 489.

890. Nor do the affidavits of publication of notice of sale, and of the fact of sale pursuant thereto, prove, by themselves, a valid foreclosure: *Hebert v. Bulte*, 42 M. 489.

891. Those affidavits are not required to be recorded, and the proof of sale may be made by oral testimony: *Doyle v. Howard*, 16 M. 261; *Lee v. Clary*, 38 M. 223.

892. When the mortgage is shown and a sale apparently in accordance with its terms, a presumption arises that will protect purchasers whose rights are collaterally attacked; *Snyder v. Hemmingway*, 47 M. 549.

5. Deed.

893. Under the act of April 19, 1883, the deed could lawfully be made by the person selling, or his executors, whether in or out of office: *Hoffman v. Harrington*, 38 M. 892.

894. A sheriff's deed on foreclosure is not made invalid by an error in setting forth the date of a mortgage, which is so described otherwise as to be clearly identified. The statute does not prescribe the form of such a deed: *Reading v. Waterman*, 46 M. 107.

895. The deed must state the price for which each parcel was sold, or the foreclosure will be held invalid: *Lee v. Mason*, 10 M. 408.

896. A deed which represents the lands as sold as a single tract and for one gross sum, when in fact the sale was in parcels, is erroneous: *Grover v. Fox*, 36 M. 461.

897. The deed must be acknowledged; a falsely antedated deed and certificate of acknowledgment are invalid: *Ibid*.

898. And such a falsely antedated deed and certificate made ten months after sale will not cure defects in a deed made at the time of the sale: *Ibid*.

899. The provision in H. S. § 8505 requiring the officer to indorse upon the deed the time when it will become operative is directory merely: *Johnstone v. Scott*, 11 M. 232; *Doyle v. Howard*, 16 M. 261.

900. The foreclosure is not void by reason of the sheriff erroneously stating the time of redemption, in his certificate indorsed upon the deed, as one year instead of two. To avoid the foreclosure it must be shown that a tender of the redemption money was actually made within the two years: *Johnstone v. Scott*, 11 M. 232.

901. The statute fixes the time for redemption, and a sheriff's certificate fixing an impossible time does not invalidate the foreclosure: *Reading v. Waterman*, 46 M. 107.

902. Prior to the amendment by act 152 of 1875 to H. S. § 8505, which now requires the sheriff's deed to be deposited with the register of deeds "as soon as practicable and within twenty days after" sale, a delay of more than a year was held to invalidate the foreclosure: *Doyle v. Howard*, 16 M. 261.

903. The sheriff's deed on foreclosure at law should be filed immediately after sale, and where this is done without unreasonable delay, the year for the redemption of the premises runs from the date of the filing: *Lilly v. Gibbs*, 39 M. 394.

904. Whether there may not be so long a delay as to render the whole proceeding as one of foreclosure void, *quere: Ibid*.

905. But it seems that a brief delay, while it might subject the sheriff to a *mandamus* requiring him to perform his duty, ought not entirely to destroy the foreclosure: *Doyle v. Howard*, 16 M. 261.

906. And the neglect to file the deed within twenty days after the sale does not of itself invalidate the foreclosure, but extends the time for redemption by the period of the delay: *Perkins v. Keller*, 43 M. 53.

907. The presumption of law that a public officer performs his duty applies where the question is whether a sheriff's deed on foreclosure was immediately filed by him, and, unless the circumstances of the case overturn it, prevails so far as to throw the burden of proof upon the party who questions the fact: *Sinclair v. Learned*, 51 M. 335.

908. A statutory foreclosure is not inval-

idated by neglect for more than twelve years to record the sheriff's deed; for if redemption is not made within one year from the date of the sale and deposit of the deed all rights are barred: *Sanford v. Cahoon*, 68 M. 223.

909. A mortgagee bid in the property at a foreclosure sale, but afterward extended the time of payment and made such arrangements with the mortgager as rendered the sale ineffective. The mortgager defaulted again in payment and the mortgagee then recorded the sheriff's deed, assigned the mortgage, and quitclaimed the land. Held, that the sheriff's deed was then of no force, because the proceedings on which it depended had been invalidated: *Dodge v. Brewer*, 31 M. 227.

910. A sheriff's deed by itself is no evidence of a regular foreclosure of mortgage by advertisement under the statute: *Barman v. Carhartt*, 10 M. 338; *Hebert v. Bulte*, 42 M. 489.

911. H. S. § 8506, in declaring that a sheriff's deed on foreclosure shall vest in the grantees all the interest which the mortgager had at the time of executing the mortgage, or at any time thereafter, does not enlarge any estate definitely limited in the mortgage, but as between original parties may bind a subsequently acquired interest: *Brayton v. Merithew*, 56 M. 166.

XII. REDEMPTION.

(a) *The right in general.*

912. The equity of redemption is not an equitable, but is practically a legal, estate: *Gorham v. Arnold*, 23 M. 247; *Hoffman v. Harrington*, 33 M. 392.

913. And it is an interest in land such as can only be conveyed by writing: *Cowles v. Marble*, 37 M. 158; *Rawdon v. Dodge*, 40 M. 697.

914. A mortgager may release to the mortgagee the equity of redemption for a valuable consideration, when it is done voluntarily and there is no fraud, and no undue influence is brought to bear upon him for that purpose by the creditor: *Batty v. Snook*, 5 M. 231.

915. Equity is jealous of all contracts between mortgager and mortgagee by which the equity of redemption is to be shortened or cut off: *Ibid*.

916. But an agreement contemporaneous with or subsequent to a transaction that is in effect a mortgage is void if it stipulates to give up the equity of redemption on default: *Ibid*.

917. The owner of a mortgage agreed, in

writing, with the widow of the owner of the equity of redemption, that he would bid the property in on foreclosure and pay her a certain amount, less the sum then due on the mortgage. Instead of doing so he allowed the property to be struck off to another person for much less than its value and for less than half of what he had agreed to pay her, and took a conveyance of it from the purchaser. The sale was not such a public sale, with competition, as the law contemplates. *Held*, that the widow and heirs of the owner of the equity of redemption were entitled to have the sale vacated; and as this was not a proceeding to enforce the agreement with the mortgagee or to determine who would have been entitled to the moneys which he was to have paid to the widow, the question whether the agreement was not a fraud upon the rights of the heirs or of creditors does not arise: *Fix v. Loranger*, 50 M. 199.

918. A second mortgagee's right to redeem a prior mortgage cannot be cut off or prejudiced by arrangements between the mortgager and the holder of the first mortgage for an extension of the time in which to pay it: *Sager v. Tupper*, 35 M. 134.

919. A guardian has a right to redeem the lands of his ward from mortgagesale: *Marvin v. Schilling*, 12 M. 356.

920. A mortgagee cannot transfer title to any part of the mortgaged premises free and clear of the right to redeem: *Gorham v. Arnold*, 22 M. 247.

921. The mere assumption of a mortgagee, evidenced by his giving a deed, that he has title in fee, cannot bar the equity of redemption; neither can an occasional occupation under such deed, or any occupation short of a continuous and notorious one adverse to the right to redeem: *Humphrey v. Hurd*, 29 M. 44.

922. The right to redeem from a mortgage executed prior to 1843 could not affect the right of possession, and could only be asserted by bill: *Hoffman v. Harrington*, 33 M. 392.

923. To bar the equity of redemption the mortgage should be foreclosed by advertisement or in equity: *Comstock v. Howard*, W. 110.

924. Before the period of redemption from a statutory foreclosure expired, A., the mortgager, died. His widow sold the land to B. by warranty deed, in consideration of B.'s paying her \$25 and what was due on the mortgage. B. redeemed, and A.'s heirs afterwards brought ejectment against him. *Held*, that B. had a lien on the land for the redemption money paid by him, with interest, less the use

and occupation of the premises over and above improvements: *Webb v. Williams*, W. 544.

925. A lien for redemption money is an independent equity, and not merely appurtenant to the mortgage held by a mortgagee who has redeemed; so that proceedings to enforce the lien may be taken before such mortgage matures, and the discharge of the mortgage does not cut off the lien: *Powers v. Golden Lumber Co.*, 43 M. 468.

926. When a mortgager redeems it should always be construed as payment, he being personally liable for the debt. But when his vendee redeems, who is not personally liable, and there is an intervening mortgage between the one redeemed by him and his equity of redemption, the same rule should prevail as in case of redemption by a subsequent mortgagee: *Johnson v. Johnson*, W. 331; *Webb v. Williams*, W. 544.

(b) *Proceedings in equity.*

As to costs on bill to redeem, see COSTS, §§ 175, 176.

1. When allowed; who entitled.

927. Where a mortgage of indemnity was foreclosed at law before the mortgagee had been damnified the mortgager was held entitled to redeem: *Thurston v. Prentiss*, W. 529.

928. Where one whose land had been sold in statutory foreclosure was induced by the acts and conversation of one who had bought the land from the foreclosure purchaser to believe that the title had been taken for his own benefit, and to give up efforts to get from other quarters the money to redeem until it was too late, *held*, that he is entitled to a decree for a redemption, and an accounting: *Newman v. Locke*, 66 M. 27 (May 5, '87).

929. If a mortgager wishes to test in the court of chancery the validity of a statutory foreclosure he must file a bill to redeem. He cannot file a bill to set aside the sale and have the property resold, although the mortgagee may have abused the power to sell and purchased the property himself: *Schwarz v. Sears*, W. 170.

930. Relief in equity against forfeiture is founded upon the principle that the possessor of a legal right shall not be allowed to use it to work oppression or injustice; and when a mortgager not guilty of laches brings himself within this principle, and it can be applied without injustice to others, the court should administer the proper relief: *Sandford v. Flint*, 24 M. 26.

931. A mortgagee may not so execute the power of sale contained in his mortgage as to compel the mortgager to pay more than he owes or forfeit his estate; and if it is attempted, either through mistake or fraud, a court of equity, if appealed to properly and in season, will prevent the forfeiture by allowing the party to pay the true sum in redemption of the estate: *Ibid*.

932. Where one standing in position of mortgager of a mortgage was present at and assented to a subsequent assignment of the mortgage by his assignee, to secure a debt of the latter less than the amount that it was first assigned to secure, it was held that he was not thereby estopped from asserting his right to redeem, since he must be understood as assenting only to an assignment of such interest as his assignee had in the mortgage: *Graydon v. Church*, 7 M. 86.

933. Nor would statements made by him at the time, that if the debt he was owing was paid from the mortgage he would be satisfied, estop him from redeeming: *Ibid*.

934. And where a receiver in chancery, to whom a mortgager of a mortgage had assigned, was called upon by a subsequent assignee to redeem his interest in the mortgage, and was told that, unless such redemption was made, such assignee was about to transfer the mortgage to another, and the receiver declined to redeem, and told the assignee he might sell to whom he pleased, whereupon the assignee did sell, but to one who was aware of the conditional nature of the assignments, it was held that the receiver was not thereby estopped from asserting his right to redeem: *Ibid*.

935. Courts of equity cannot extend the time for redemption on a statutory foreclosure where redemption within the time limited has been prevented by accident and misfortune, or by an unavoidable mental and physical disorder: *Cameron v. Adams*, 31 M. 426.

936. The right of a second mortgagee to redeem from the foreclosure of the prior mortgage is barred if he allows the foreclosure to become absolute: *Gantz v. Toles*, 40 M. 725.

937. A foreclosure under the power of sale, if made for an excessive amount, may be set aside before the proceedings under it are perfected, on a bill filed by the debtor for leave to redeem on paying the amount due: *Schwarz v. Sears*, H. 440.

938. Where, pending the year of redemption from a statutory foreclosure, the owner of the equity of redemption is induced by the acts and statements of the foreclosure holders and of their grantee to give up efforts to raise

the money in time, and to believe that he will be allowed further time, the title will be considered as taken for his benefit: *Newman v. Locke*, 66 M. 27 (May 5, '87).

939. One whose sole interest in lands is under a trust deed, by virtue of which he is to be entitled to the lands after payment of the mortgages upon it and certain other specified demands, is not entitled, if he repudiates the trust, to file a bill to redeem from the mortgages: *Smith v. Austin*, 11 M. 84.

940. Equity will not lend its aid to enable a volunteer to pay off a mortgage on the lands of another, or to subrogate him to the rights of a mortgagee in a mortgage so paid: *Smith v. Austin*, 9 M. 465.

941. One who shows no subsisting legal or equitable right in the property, nor any lien or charge upon it, cannot maintain a bill to redeem from a mortgage: *Harwood v. Underwood*, 28 M. 427.

942. Transactions between the parties with reference to a sale by the defendant to the complainant of a mortgage interest cannot have any force as the foundation for a bill to redeem from the mortgage: *Ibid*.

943. The mere levy of an execution upon lands to which the judgment debtor never had any title, and in which he never held any leivable interest, does not constitute any lien or charge upon the lands, or invest the execution creditor with any right or title on which to found a suit for the redemption of a mortgage upon them: *Ibid*.

944. No one has any right to redeem from a mortgage who has no existing interest in the land; but the tender of redemption money is construed as the claim of such an interest, and if the mortgagee receives and retains the money tendered he cannot repudiate the claim: *Millard v. Truax*, 50 M. 348.

945. A second mortgagee has an absolute right, at any time after a prior encumbrance comes due, to redeem from and be subrogated to it until his own mortgage, as well as the former, shall be paid up and his whole claim refunded. And where a statutory foreclosure has been had that is void for irregularities, and the purchaser's assignee refuses to recognize his right to redeem, he can maintain a bill against such assignee for an accounting as to the amount due and for the removal of the apparent cloud caused by the foreclosure and for leave to redeem on equitable terms: *Sager v. Tupper*, 85 M. 184.

946. A bill to redeem, filed by several persons jointly, cannot be maintained if the ground of their joint claim fails, whatever any

one of them, claiming title from another source, might be entitled to in a separate proceeding: *Bigelow v. Booth*, 39 M. 622.

947. Suit to redeem having been brought by the administrator of the grantor in a deed absolute that was in fact a mortgage, it was for the first time objected at the hearing on pleadings and proofs that the heirs of the mortgaging grantor should have been joined as complainants. *Held*, that as the heirs were nowise prejudiced, and the administrator, under the statute, had such an interest in the real estate as entitled him to redeem, and complete justice could be done to the parties in the case as it stood, the objection was not well taken: *Enos v. Sutherland*, 11 M. 588.

948. A bankrupt had a mortgage on certain property. Sale being had under a later mortgage, his assignee, who had not been impleaded in foreclosing it, took from the mortgager an order for the surplus, but only with the idea of using it to procure redemption of the bankrupt's mortgage without litigation. *Held*, that his taking the order did not preclude his bringing suit to redeem, and such a defence could not be heard if not asserted in the answer: *Avery v. Eyerson*, 34 M. 362.

949. Where no steps have been taken to redeem a mortgage for nearly forty years after its maturity, and more than thirty after an open attempt to foreclose, it requires a very strong showing to authorize a bill to redeem: *Hoffman v. Harrington*, 33 M. 392.

950. Where a second mortgagee asked to redeem in equity, and more than twenty years had elapsed since the right to redeem accrued, it was *held* the right was barred by lapse of time, whether the premises had been occupied under the first mortgage for twenty years or not: *Cook v. Finkler*, 9 M. 131.

951. Where a second foreclosure by advertisement was begun pending a suit in equity to redeem from the mortgage and to enjoin a sale under a prior proceeding, it was *held* that as the court of equity could take complete jurisdiction upon the bill then pending, and as the dispute between the parties could only be adequately dealt with in equity, the new proceeding by advertisement was unnecessary and was taken subject to the final action of the court in the equity suit, and should be set aside: *Louder v. Burch*, 47 M. 109.

2. Pleadings and practice.

952. One who files a bill to redeem from a mortgage must show by his bill that he has an interest in the equity of redemption: *Lamb v. Jeffrey*, 47 M. 28.

953. Where any other person than the mortgager files a bill to redeem the bill must show that complainant has some title or interest in the land derived through the mortgager, or in some way springing out of his general equity of redemption. And it must show the nature or derivation of the title or interest so claimed: *Smith v. Austin*, 9 M. 465.

954. Where a bill to redeem only stated that complainant, after the giving of the mortgage, became interested in the land by contract, but without setting out the contract, or stating the parties, or its terms, or the interest contracted, it was *held* insufficient: *Ibid*.

955. Recitals in exhibits attached to the bill, and which the bill prays may be made a part of the bill with all their averments, which recitals speak of complainant as having "become the purchaser" of the mortgaged premises, cannot aid the bill in this particular; the recitals not showing from whom the purchase was made, nor the interest purchased, nor whether it was subject to the mortgage or not: *Ibid*.

956. In a bill by a mortgager for relief against a statutory foreclosure for a sum larger than was due upon the mortgage, an offer to redeem is not an indispensable requisite in a case where there is no reason to believe the defendant has been misled, and the case shows that the parties have gone into the merits fully as upon a bill to redeem: *Sandford v. Flint*, 24 M. 26.

957. Bill to redeem from a conveyance claimed to be a mortgage. The bill was not filed until thirty-four years after the maturity of the mortgage, which the bill alleges to have remained unpaid, and twenty-four years after the grantee had sold and conveyed the land. A party seeking to redeem after such a lapse of time is bound to show affirmatively in his bill such facts as will establish the instrument as continuing in force and subject to redemption: *Reynolds v. Green*, 10 M. 355.

958. The bill showed that the grantee in the mortgage conveyance, and those claiming under him, had claimed and disposed of the premises as absolute owners for more than twenty years, and that possession had been had under them. It averred that the possession had not been continuous and adverse for twenty years, but did not show that it was *taken* within that time. No excuse was shown for the delay in applying to redeem, and it was *held* that the averments in the bill were too uncertain to found a right to redeem upon: *Ibid*.

959. Where an assignee in bankruptcy files

a bill to redeem, the objection that it is not shown that the assignee obtained permission from the court of bankruptcy to bring the suit will not be considered unless it is pleaded, if at all: *Avery v. Ryerson*, 34 M. 862.

960. Where a bill for relief against a mortgage neither counts upon nor mentions an alleged assignment to the complainant of a right to redeem, such assignment is outside the issue: *Glass v. Glass*, 50 M. 289.

961. If one who files a bill to redeem avers that he owns a certain mortgage which is a subsequent mortgage to that of defendant, and his bill is not demurred to, it may be sustained notwithstanding he fails to set forth such facts as show that his mortgage and that from which he seeks to redeem are mortgages in the same chain of title. Especially is this so when it appears that defendant has recognized his right to make payments by receiving interest from him: *Lamb v. Jeffrey*, 47 M. 28.

962. If one has acquired possession of lands under a mortgagee, but asserts a paramount title, the assignee of the mortgagor who files a bill to redeem is not obliged to show that the mortgagor had title when he gave the mortgage, but the defendant must take upon himself the burden of showing that the title he sets up in opposition to the mortgage title is valid and paramount: *Farmers', etc. Bank v. Bronson*, 14 M. 361.

963. Upon a bill to redeem defendant will not be allowed to increase the amount apparently due by showing an agreement, not stated in either the bill or the answer, to pay extra interest on the mortgage: *Fosdick v. Van Huse*, 21 M. 567.

964. Where a party comes to have a foreclosure set aside and for leave to redeem he must bring into court the amount admitted to be due. The deposit will only be dispensed with where there is uncertainty as to the amount due: *Schwarz v. Sears*, H. 440.

3. Decree.

965. A., the holder of the first of five mortgages on a piece of land, took proceedings in chancery to foreclose it, making all the subsequent mortgagees parties except D., the last. Decree for the sale was obtained, and a sale made at which B., the administrator of C., the second mortgagee, became the purchaser for a few dollars over the amount of the first mortgage. B. bought in his own name, but stated at the time that he bought to protect the interests of the C. estate. He then filed his bill against D., setting up all the facts and praying that D. be decreed to redeem by pay-

ing the amount of both the A. and C. mortgages and costs, or be foreclosed. D. filed a cross-bill, claiming the right to redeem on paying the amount of B.'s bid, with interest. The mortgaged premises were shown to be worth at least the amount of the A. and C. mortgages. Held, that D. could not be permitted to redeem without paying the amount of both: *Baker v. Pierson*, 6 M. 522.

966. The redemption of a mortgage will not be decreed on any terms other than the payment of the mortgagee's claim: *Cowles v. Marble*, 37 M. 158.

967. On a bill to redeem from an irregular foreclosure, if the foreclosure proceedings are found invalid the decree should provide for redemption from the mortgage as an unforsclosed security, and not for redemption from the void sale, and in fixing the amount to be paid on such redemption it is erroneous to make a rest in computing interest at the date of the sale, and the decree should provide for a sale as on foreclosure to produce satisfaction in case of failure to redeem: *Grover v. Fox*, 36 M. 461.

968. Where, on bill to redeem, a deed absolute in form is adjudged to be a mortgage, and the mortgagee had, before the bill was filed, conveyed to one of the other defendants, the decree should direct the amount due to be paid to such grantee instead of the mortgagee: *Emerson v. Atwater*, 12 M. 814.

969. It is proper in such a case to direct a sale of the premises to satisfy the amount due in default of payment by the time fixed, instead of decreeing a strict foreclosure: *Ibid.*

970. On a bill to redeem in a case where a controversy exists as to the amount due upon it, the mortgagee having proceeded to foreclose by advertisement, if the court allows the redemption the proper decree is that, unless the redemption money is paid within a specified time, the premises be sold as in foreclosure cases, and not that the title shall be absolute in the mortgagee: *Fosdick v. Van Huse*, 21 M. 567.

971. The proper decree where a mortgagor files a bill to cancel a mortgage past due and which his adversary is seeking to foreclose, but which the court finds to be valid, is a decree for redemption. Every such bill is regarded as in the alternative a bill to redeem: *Goodenow v. Curtis*, 33 M. 505.

972. Where the decree on a bill to redeem provided that, if redemption were not made within three months, defendant should have strict foreclosure, it was modified on appeal so as to permit defendant to proceed to sale: *Newkirk v. Newkirk*, 56 M. 525.

973. Where a bill to enforce the discharge of a mortgage had been filed before the time for redemption had expired, but after foreclosure was begun, and it was held that the complainant mortgager was not entitled to a discharge, he was allowed to redeem on paying the amount of the debt with interest at the stipulated rate, and the costs of foreclosure, with interest, but without the attorney fee provided for in the mortgage: *Parks v. Allen*, 42 M. 482.

974. Where, as preliminary to a bill to redeem from a prior mortgage, the amount necessary for redeeming from an irregular statutory foreclosure thereof was deposited with the register of deeds, the court on granting leave to redeem stopped interest on the deposit during the time it remained in the register's hands and while the adverse party refused to receive it and contested the redemption: *Sager v. Tupper*, 35 M. 134.

975. Where one who seeks to enforce a right to redeem from a prior mortgage omits to keep good his tender in his bill, the omission, as in cases of specific performance, only raises a question of costs: *Lamb v. Jeffrey*, 41 M. 719.

976. A dismissal of a bill to redeem from foreclosure makes the foreclosure absolute and bars the mortgager's rights: *Goodenow v. Curtis*, 33 M. 505; *Adams v. Cameron*, 40 M. 506.

(c) *Statutory redemption from foreclosure by advertisement.*

977. A subsequent mortgagee could, under R. S. 1838, redeem premises sold on the statutory foreclosure of a prior mortgage: *Kimmell v. Willard's Administrator*, 1 D. 217.

978. A subsequent mortgagee may redeem a prior mortgage which has been foreclosed by advertisement: *Carter v. Lewis*, 27 M. 241.

979. A second mortgagee is entitled to redeem from a prior mortgage and have the benefit of an assignment of the mortgage: *Lamb v. Jeffrey*, 41 M. 719.

980. Any one who has any interest in mortgaged premises, or in any part of them, is entitled to redeem them from foreclosure, and he must redeem completely if at all: *Powers v. Golden Lumber Co.*, 43 M. 468.

981. A tenant in common of mortgaged land from whom the foreclosure has been purposely concealed may redeem; but he must not have been guilty of laches, nor have acquiesced by accepting his share of the surplus: *Norton v. Tharp*, 53 M. 146.

982. Where a mortgage executed prior to

the statute abolishing ejectment by mortgagees was assigned for the purpose of securing the assignor's debt, the right of the assignor to redeem stands upon the same footing as that of the mortgager of real estate: *Graydon v. Church*, 7 M. 86.

983. A subsequent purchaser whose deed, by reason of his having had notice of the mortgage, is subject to the lien, is entitled to redeem, and the question of the *bona fides* of his purchase cannot be raised by the mortgagee: *Stone v. Welling*, 14 M. 514.

984. Redemption from a statutory foreclosure cannot be conditioned on the payment of any allowances in the nature of fees beyond what are authorized by statute, and an attorney fee paid under protest on redeeming was allowed to be recovered back: *Vosburgh v. Lay*, 45 M. 455.

985. A sale on statutory foreclosure satisfies the mortgage debt and releases the personal obligation to the extent of its proceeds; but a subsequent encumbrancer who redeems from it thereby obtains such an interest in the land as will protect him, and later encumbrancers who are also benefited must not only repay the redemption money, but must pay his mortgage; and as the two claims are distinct, the liens therefor are not merged, and the payment of one cannot release the other: *Powers v. Golden Lumber Co.*, 43 M. 468.

986. One who holds a mortgage under a fraudulent assignment is entitled, if he has redeemed upon the foreclosure of a prior mortgage, to receive from the owner of the land the amount of the redemption, but he cannot have interest thereon where his concealment of the fact of such assignment to himself and his refusal to give it up have delayed settlement and prevented the owner from redeeming: *Wallace v. McBride*, 70 M. 586 (June 15, '88).

987. A bill in equity is not needed to enable a mortgager to redeem from a foreclosure sale within the period allowed for redemption: *McHugh v. Wells*, 39 M. 175.

988. Where there is an existing mortgage a subsequent mortgagee can be made to redeem against it or be barred of all rights under his mortgage: *Tower v. Divine*, 37 M. 443.

989. The statute of 1840 for the foreclosure of mortgages (Laws of 1840, p. 145) required redemption moneys to be paid to the register of deeds, and to no other person; and it was his duty, upon such payment, to destroy the deed, and pay over the money to the purchaser, his heirs or assigns: *Woodbury v. Lewis*, W. 256.

990. The register of deeds has no right to

receive anything but money in redemption of property sold. His powers are limited to receiving the money and destroying the deed. He is a special agent for these purposes only, and his acts are not binding on the purchaser when he exceeds or departs from his authority without the assent of the purchaser: *Ibid*.

991. Although the register of deeds is allowed to receive nothing but money, yet it is a sufficient payment, in redemption of a foreclosed mortgage, to give him, at his request and in good faith, a check for the amount required, keeping the money to meet it in the bank until called for: *Carter v. Lewis*, 27 M. 241.

992. An offer to a mortgager to give him time within which to redeem the whole or a part of the premises from statutory foreclosure cannot avail to correct illegalities or to preclude the mortgager from taking advantage of them and demanding redemption, and a limit of ten days proposed for redemption is inequitable: *Grover v. Fox*, 36 M. 461.

XIII. ACTIONS AT LAW FOR THE DEBT OR DEFICIENCY.

993. H. S. § 6703, declaring that legal proceedings to recover a mortgage debt for which a foreclosure suit is pending shall not be had unless authorized by the court, leaves the question of permitting such proceedings to be determined in equity by the court where the foreclosure is pending, and not at law. That court will compel an election of remedies, or permit the double action, in its discretion: *Joslin v. Millsbaugh*, 27 M. 517.

994. A party sued on a note secured by mortgage set up as a defence that a foreclosure had been commenced and carried to a decree. Held, that this was no bar to the action, but that defendant should have moved the court pending the foreclosure to restrain the unauthorized action: *Goodrich v. White*, 39 M. 489.

995. Leave to proceed at law while foreclosure is pending in chancery ought not to be granted *ex parte* where defendant is within reach: *Ibid*.

996. Proceedings at law to recover a deficiency on mortgage foreclosure can be taken only by leave of the court in which the foreclosure was decreed: *Innes v. Stewart*, 36 M. 285.

997. The rule that proceedings at law to enforce payment of a deficiency on foreclosure cannot be taken without leave of the court in which foreclosure was had does not apply to an action begun by leave of the probate court upon the bond of the mortgager's resid-

uary legatee; and the omission to obtain leave also from the court in chancery is a mere irregularity that can be waived by defendants: *Culver v. Superior Court Judge*, 57 M. 25.

998. It seems that where proceedings by foreclosure and for a deficiency thereon are ineffective, an action at law can be instituted for the debt without leave from the court in chancery: *Ibid*.

999. After sale of mortgaged premises on foreclosure in equity, the court cannot authorize an action at law for the deficiency until an execution has been issued therefor under order of the court and returned unsatisfied in whole or in part: *Shields v. Riopelle*, 63 M. 458.

1000. Land was mortgaged to one person to secure three notes payable at different times. He foreclosed to obtain payment of the first two notes, and sold and bid in the land subject to the third note not yet due. There was no redemption. Held, that the mortgagee could not sue the mortgager on the remaining note, as the latter would then be entitled to reimbursement from the land, thus causing a multiplicity of suits: *Shermer v. Merrill*, 33 M. 284.

MUNICIPAL CORPORATIONS.

See CITIES AND VILLAGES; COUNTIES; SCHOOLS; TOWNSHIPS.

As to the right of local self-government, see CONSTITUTIONS, §§ 450-485.

Protection of their property rights, see CONSTITUTIONS, §§ 54-56.

Cannot grant aid to railroads, see CONSTITUTIONS, §§ 815-821.

As to their liability for defective highways, bridges, etc., see HIGHWAYS, XIV.

MURDER.

See CRIMES, III, (a), 1.

NAME.

1. A girl who has been practically, though not formally, adopted into a family, in pursuance of an understanding that she should be in all things as a daughter, may use the name as her own in bringing suit against the head of the family: *Watson v. Watson*, 49 M. 540.

2. A bastard child can only have a name by reputation or baptism, and does not take the mother's name unless gained by reputation: *Shannon v. People*, 5 M. 71.

3. A change of name does not necessarily destroy identity so long as that to which the name pertains remains the same: *Perkins v. Keller*, 48 M. 53.

4. The use by a person of different names is immaterial where the question is one of identity only, and the identity is clearly established: *Boyce v. Danz*, 29 M. 146.

5. The fact that one who contracted in the name of *O'Connor* calls herself *Connor* is immaterial where she is known by both names and the identity is clearly made out: *Hibernia Ins. Co. v. O'Connor*, 29 M. 241.

6. Jonathan and John are not, in contemplation of law, the same: *Moore v. Graham*, 58 M. 25.

7. *Dickson* and *Dixon* are *idem sonans*: *Reading v. Waterman*, 46 M. 107.

8. So are *Finnegan* and *Finegan*: *People v. Mayworm*, 5 M. 146.

9. So are *Kenney* and *Kinney*: *Kinney v. Harrett*, 46 M. 87.

10. So are *Trowbridge* and *Trobridge*: *Buhl v. Trowbridge*, 42 M. 44.

11. If a foreigner's identity is in doubt by reason of varying modes of spelling his name, whether the sounds of the various forms, *e. g.*, *Boyce* and *Bice*, as pronounced by foreigners, are not sufficiently identical to make the rule of *idem sonans* applicable, *quere*: *Boyce v. Danz*, 29 M. 146.

12. It seems that there is no rule of law which makes an invariable distinction between the written signs for I and J: *Picard v. McCormick*, 11 M. 63.

13. An abbreviation which, according to the common understanding, fully expresses the name thereby intended, is sufficient: *People v. Tisdale*, 1 D. 59.

Use of initials, etc., in ballots, see ELECTIONS, §§ 41-48.

As to presumption of identity of person from identity of name, etc., see EVIDENCE, §§ 1502-1509.

Further as to NAME, see this heading in the Index.

NE EXEAT.

1. History of the practice as to the writ in England and the United States: *Bailey v. Cadwell*, 51 M. 217.

2. The writ is never granted in any case except as equitable bail for a sum due and ascertainable as a money demand: *Fitzhugh v. Maxwell*, 84 M. 198.

3. A statute is invalid which gives a circuit judge or court the power to issue a *ne exeat*

against a debtor at discretion: *Risser v. Hoyt*, 53 M. 185.

4. The writ cannot be issued and served before service of subpoena: *Peltier v. Peltier*, H. 19.

5. *Ne exeat* cannot issue in divorce cases before decree: *Bailey v. Cadwell*, 51 M. 217.

6. A circuit court commissioner or injunction master cannot issue a *ne exeat* in any case: *Ibid*.

NEGLIGENCE.

I. IN GENERAL.

(a) *What constitutes; proximate cause.*

1. Generally.

2. Injuries to employees.

(b) *Evidence; presumptions; burden of proof.*

(c) *Whether question of law or fact.*

II. RESPONDEAT SUPERIOR.

III. CONTRIBUTORY NEGLIGENCE.

(a) *In general; what constitutes.*

(b) *In case of employees.*

(c) *Effect of age, sex, etc.*

(d) *Evidence; burden of proof; question of fact or law.*

As to the damages in actions for personal injuries from negligence, see DAMAGES, §§ 82, 83, 100, 247, 334-335.

Damages for negligence causing death, see DAMAGES, §§ 344-355.

As to negligence of RAILROADS, see that title.

As to liability of municipal corporations for negligence with reference to streets, bridges, etc., see HIGHWAYS, §§ 176-219.

Pleading, see PLEADINGS, §§ 232-254, 353, 536-546, 585, 587, 675.

I. IN GENERAL.

(a) *What constitutes; proximate cause.*

1. Generally.

1. Negligence is neither more nor less than a failure of duty: *M. C. R. Co. v. Coleman*, 28 M. 440.

2. Negligence consists in a want of that reasonable care which would be exercised by a person of ordinary prudence under all the existing circumstances, in view of the probable injury: *Detroit & M. R. Co. v. Van Steinburg*, 17 M. 99.

3. Negligence consists in the failure to observe that degree of care which the law requires for the protection of the interests likely to be injuriously affected by the want of it: *Flint & P. M. R. Co. v. Stark*, 28 M. 714; *Kendrick v. Towle*, 60 M. 363.

4. Negligence is the failure to observe, for the protection of another's interests, such care, precaution and vigilance as the circumstances justly demand and the want of which causes him injury: *Brown v. Street R. Co.*, 49 M. 153.

5. To charge a person or a corporation for negligence in the performance of any public work, whereby any person has sustained special damage, the law must have imposed a duty, so as to make that neglect culpable: *Dermont v. Detroit*, 4 M. 435.

6. The law does not hold any one responsible upon the ground of negligence for not doing that which it was practically impossible to do: *M. C. R. Co. v. Burrows*, 83 M. 6.

7. The law does not impose impracticable rules of duty, but is satisfied with what is fairly reasonable under the circumstances: *Batterson v. Chicago & G. T. R. Co.*, 49 M. 184.

8. Where a right and duty concur, as where the exercise of the right is contingent on the performance of the duty, the mere failure to discharge the duty is negligence if a third person is injured in consequence: *Young v. Detroit, G. H. & M. R. Co.*, 56 M. 430.

9. Negligence implies fault, and cannot be predicated of a lawful and customary use of one's own premises: *Alpern v. Churchill*, 53 M. 607.

10. No liability for negligence can be established on a stipulation of facts which states that the act complained of was due to mistake or negligence: *Gillett v. Detroit Board of Trade*, 46 M. 309.

11. The degree of care required in any business must be in proportion to its nature and risks, but the law cannot require business to be conducted on any unusual basis, though the business be one of great risks, and requiring great caution. All rules applied must be reasonable and not oppressive, and must be applied with reference to the ordinary conduct of affairs: *M. C. R. Co. v. Coleman*, 28 M. 440.

12. The nature of the business determines whether the degree of care exercised by those employed in it is such as the law requires: *M. C. R. Co. v. Gilbert*, 46 M. 176.

13. Ordinary care has relation to the situation and condition of the parties, and varies according to the exigencies which require vigilance and attention: *Baker v. F. & P. M. R. Co.*, 68 M. 90 (Jan. 5, '88).

14. The question of diligence or negligence always depends upon the circumstances peculiar to each particular case; the general neglect of mill-owners to use spark-catchers on

their chimneys will not excuse such neglect in a particular instance, nor be pertinent evidence in an action for damages caused by sparks from the chimney of one mill, at least without some showing that the other mills were similarly situated: *Hoyt v. Jeffers*, 30 M. 181.

15. Where a mill is surrounded by numerous wooden buildings which are endangered by the frequent escape of sparks, etc., from its chimney, the owner is bound to use the best well-known device for checking escape of sparks, whether it is expressly adapted to a mill chimney or not, if it can be used upon it; in erecting and operating the mill, he must use such precautions for lessening danger and preventing injury as a prudent man, conversant with the business, the danger, and all the surroundings, would have used, or he will be liable for loss arising from it. The fact that the mill had been used for a long time without doing injury is not of weight: *Ibid.*

16. In an action for negligent injury resulting from the lack of due precautions in the conduct of one's business, defendant cannot be permitted to answer that the profits on the business are not sufficient to warrant taking them. And the question as to the necessity for the precautions is for the jury. So held where it was a question whether in blasting in an open mine the pit ought not to be covered before firing the blast: *Beauchamp v. Saginaw Mining Co.*, 50 M. 163.

17. In an action for negligent injury to property rightfully stored on another's premises, it is unimportant that a third person was joint owner of it with the plaintiff, or that defendant was not aware of plaintiff's interest; plaintiff was not bound to give notice of his interest: *Moomey v. Peak*, 57 M. 259.

18. It is negligence to disregard a positive regulation that boats moving at night shall exhibit lights, even though the practice may have been otherwise; and if injury is done, it is for the jury to determine how far it was connected with such negligence: *Billings v. Breinig*, 45 M. 65.

19. The taker of counterfeit coin or of a counterfeit of paper money which had been made a legal tender by law must use due diligence to ascertain its character and to notify the giver, to entitle him to recover its value. Any unnecessary delay beyond such reasonable time as would enable the taker of counterfeit money to inform himself as to its genuineness, and notify the giver, operates as a fraud on the giver and prevents a recovery: *Atwood v. Cornwall*, 28 M. 336.

20. In dispensing medicines a druggist is held to a high degree of care; but actual negligence in him or his employees is a necessary element in his liability when a mistake has occurred: *Brown v. Marshall*, 47 M. 576.

21. Damages are recoverable against a register of deeds who undertakes to furnish plaintiff a full abstract of the title to lands which the latter desires to purchase, if, in consequence of the careless omission therefrom of any mention of a particular encumbrance, the purchaser is put to additional expense to perfect his title: *Smith v. Holmes*, 54 M. 104.

22. While the law does not hold persons using machinery to any absolute duty of insuring its safety, it requires some care in introducing untried novelties; and where the result of any defect must be an immediate danger to human life, it devolves on those who expose such life to the danger of a new experiment that turns out badly to show that they have followed such a course as the understood rules of service or mechanics applicable to such matters rendered safe according to ordinary probabilities: *Marshall v. Widdicomb Furniture Co.*, 67 M. 167.

23. It is negligence for the manufacturer of a steamboat engine to disregard, in setting and adjusting it, the usual and reasonable precautions against mischief from it: *Clark v. Locomotive Works*, 32 M. 348.

24. Putting ashes in a wooden barrel in violation of a municipal ordinance is not negligence *per se*; it is a question of fact whether it is negligent in a particular case: *Cook v. Johnston*, 58 M. 437.

25. Hallooing on the public highway to the driver of a team for the purpose of warning him that another driver wishes to pass him cannot be treated as an act of negligence that will make one jointly liable with the driver if the latter's team takes fright and does the passing team an injury,—especially if the warning was meant to prevent a collision: *Pigott v. Lilly*, 55 M. 150.

26. Leaving a buggy standing at an angle to the beaten track, and so near that by backing one foot it would be in the way of passing vehicles, is negligence: *Joslin v. Le Baron*, 44 M. 160.

27. Those whose duty it is to keep a bridge in repair may be charged with notice of a deficiency, if, when repairs are going on, caused by suspicious appearance in one part of the timber, a full examination is not made: *Stebbins v. Keene*, 60 M. 214.

28. Machinery propelled by steam is notoriously dangerous, and the care and caution required by the owner to prevent injury to

neighboring property must be commensurate with and in proportion to the risks assumed: *Kendrick v. Towle*, 60 M. 363.

29. Racing along a city street is itself such an act of negligence as to make the racing parties responsible for a collision caused by it: *Potter v. Moran*, 61 M. 60.

30. To drive along an embankment forming part of a highway, and built across low land as an approach to a bridge across a river, at the time of an overflow, is not negligence *per se*; whether it would be negligence in a particular case depends on the circumstances, and is for the jury: *Harris v. Clinton*, 64 M. 447.

31. It is not negligence for the owner of a boat laid up in winter quarters to leave her hatchway open and unprotected by railings: *Caniff v. Blanchard Navigation Co.*, 66 M. 638.

32. One whose uninclosed grounds people cross without objection is not liable to one who falls into an unguarded cistern there: *Hargreaves v. Deacon*, 25 M. 1.

33. Nor is he any more liable in the case of a child's falling into such cistern than he would in the case of an adult's doing so: *Ibid.*

34. A small boy, finding a dynamite cartridge in a common packing-box among the saw-dust, proceeded to crack it on a stone, and maimed himself for life. The boy was rightfully on the premises, and his father was at work hard by. The packing-box was on the ground under a rude shed and was marked "Powder," but neither the boy nor his father could read. It had been left exposed by the agent of the landlord. Held, that an action would lie against the landlord for the injury; and that neither the child nor his father could be said to be guilty of contributory negligence: *Powers v. Harlow*, 53 M. 507.

35. Whoever expressly or impliedly invites others upon his premises assumes the duty of warning all who may accept the invitation of any danger in coming of which he knows or ought to know but of which they are not aware: *Samuelson v. Cleveland Iron Mining Co.*, 49 M. 164.

36. The owner of land is liable in damages to those coming thereon, using due care, at his invitation or inducement, express or implied, on any business to be transacted with or permitted by him, for an injury occasioned by the unsafe condition of the premises, which is known to him, which he has suffered negligently to exist, and of which they have received no notice: *Donaldson v. Wilson*, 60 M. 86.

37. Premises upon which gas works are located need not be fenced in order to prevent

injury to persons who, for their convenience, or for other reasons than defects in the usual way of entrance and departure, leave such way; and one who leaves such way becomes at best a licensee, and cannot recover for injuries from a defect at a distance from the way: *Armstrong v. Medbury*, 67 M. 250.

38. Persons engaged in a manufacturing business must be allowed to use the premises for that purpose in such manner as they choose, so long as that management is not dangerous to the ordinary use of the public having business with the manufactory, or to the employees: *Ibid.*

39. Where plaintiff sued for injuries received in falling into a hole on defendant's ground, held, that the situation of the hole, its proximity to the travelled path, and whether plaintiff was negligent in falling into it, were questions of fact for the jury: *Cross v. Lake Shore & M. S. R. Co.*, 69 M. 363 (April 6, '88).

40. A traveller, at night, fell into an open draw on a toll-bridge. Held, in his action against the bridge company, that if negligence was shown a liability existed; that it might be shown that the bridge company knew its draw-tender to be incompetent, and that the light was so placed as not to show the opening, and generally the situation and circumstances existing at the time: *Goodale v. Portage Lake Bridge Co.*, 55 M. 413.

41. A gratuitous bailee must not be reckless; he must observe such care as the circumstances reasonably require of him: *Flint & P. M. R. Co. v. Weir*, 87 M. 111.

42. A gratuitous bailee is liable only for gross negligence: *Barrows v. Cushman*, 87 M. 481.

43. Where one of two innocent parties must suffer a loss occasioned by the negligence of one of them, it must rest on the one who caused it, however honest his intentions may have been: *Wilson v. Arnold*, 5 M. 98, 105; *Moran v. Palmer*, 13 M. 367, 377; *Stebbins v. Walker*, 46 M. 6.

44. The limits indicated of the principle that where one of two innocent persons must suffer by the fault of a third, he shall sustain the loss whose negligence put it into the power of the third to occasion it: *Burson v. Huntington*, 21 M. 415, 482, 435; *Holmes v. Trumper*, 22 M. 427, 432; *Gibbs v. Linabury*, 23 M. 479, 490; *Smith v. Osborn*, 33 M. 410.

See ESTOPPEL, §219.

45. When one of two parties equally innocent must suffer, the law leaves the loss where it has chanced to fall: *First National Bank v. Burkham*, 32 M. 328, 331.

46. A telephone company, in introducing its wire into a store which it did not own or control, lifted up a loose plank in the sidewalk, and replaced it in the same condition. The company having nothing to do with maintaining the sidewalk, and not having created the danger, was not liable to one who thereafter stepped on the plank and was injured: *Davis v. Michigan Bell Telephone Co.*, 61 M. 807.

47. Where a fire, caused by the defendant's negligence, actually passes from one to another of the plaintiff's buildings without any contributory negligence on the plaintiff's part, or any fault of a third party, which could be regarded as a proximate cause, and for which the third party could be held liable, it is not error to hold defendant liable for the burning of the second as well as of the first building. If such a rule of damages is ruinous to him by whose negligence fires occur, it is better that he should suffer than that he should be allowed to ruin others who are innocent of neglect or wrong: *Hoyt v. Jeffers*, 80 M. 181.

48. There can be no recovery for an injury that is not a proximate consequence of the negligence complained of; the court cannot select some cause back of the proximate one whereon to base an action: *Lewis v. Flint & P. M. R. Co.*, 54 M. 55.

49. A carrier's negligence in carrying a passenger beyond his station and misinforming him as to where he was, was held not to be the proximate cause of an accidental injury suffered by him after he had ascertained his situation and while he was approaching the right road: *Ibid.*

50. Where plaintiff's horse, frightened by a hole in a bridge, backed against the railing of the bridge, which gave way and threw plaintiff below, the defective condition of the bridge is the proximate cause of the injury: *Smith v. Sherwood*, 62 M. 159.

51. The illegal obstruction of a highway by a freight train standing across it is not the proximate cause of the injury which a driver, who is waiting to get across the track, may suffer from having his horses frightened by a passing train while he is detained there: *Selleck v. Lake Shore & M. S. R. Co.*, 58 M. 195.

52. A railroad car was left for three or four days at a highway crossing so near the travelled part of the way that a wagon could not pass without the wheels or whiffle-tree coming in contact with the bumper of the car. The car frightened a horse attached to a passing wagon, and the driver was injured. Held that, in the absence of testimony that the horse was vicious or unusually excitable, or

that the driver failed to use due care, the position of the car was the proximate cause of the injury, and the company was liable: *Peterson v. Chicago & W. M. R. Co.*, 64 M. 621.

53. A passenger's negligence in going to the platform of a car while it is still moving does not affect his right to recover for an injury suffered in properly alighting after the train was stopped: *Wood v. Lake Shore & M. S. R. Co.*, 49 M. 370.

54. Where, in an action for fatal injury, it becomes a question whether death resulted from the injury or from some disease with which it had become involved, the party causing the injury cannot escape full liability without showing that death must have resulted if the injury had not been done: *Beauchamp v. Saginaw Mining Co.*, 50 M. 163.

As to negligence in carriage and delivery as proximate cause of damage, see CARRIERS, §§ 43, 90.

As to identification of passenger with driver of conveyance so as to preclude recovery for injury from latter's negligence, see CARRIERS, §§ 152-154.

That a parent is not guilty of negligence in allowing a child to ride upon a street railway car unattended, see CARRIERS, § 135.

Officers' liability for negligence, see OFFICERS, VI.

As to the degree of care required of carriers of passengers, see CARRIERS, V, (b).

That negligence may be predicated upon the construction of a public work, but not upon its plan, see CITIES AND VILLAGES, §§ 403-416, 418; COUNTIES, §§ 92, 93.

2. Injuries to employees.

55. A servant cannot recover from his master for a negligent injury received in his service without showing some fault on the part of the master: *Quincy Mining Co. v. Kitts*, 43 M. 34.

56. Accidental injuries to a servant will not sustain an action against the master where they arise from the servant's voluntary use of machinery which he understands and to which no objection has been made as being peculiarly unsafe: *Richards v. Rough*, 53 M. 212.

57. A youth of nineteen employed for three years in a furniture factory where many different kinds of machinery were used was told by the foreman that unless he wished to run a certain split-saw three or four days he would have to lay off. He chose to run the saw, and on the fourth day lost his little finger by reason of the flying up of the piece of wood he was cutting. He had already com-

plained that the work was too hard for him, and he had had no previous experience with it. The casualty was of a kind that had never happened before in the experience of the foreman, and consequently could not be foreseen. Held, that it was an accident for which he could not recover: *Prentiss v. Kent Furniture Mfg. Co.*, 68 M. 478.

58. An employer cannot be held liable as for negligence in omitting to guard against accidents that are not likely to happen: *Sjogren v. Hall*, 53 M. 274.

59. For an injury received by a workman who catches his hand in the exposed cogs of an ordinary planing-machine the master is not liable: *Schroeder v. Michigan Car Co.*, 56 M. 132.

60. When a master has done all that can be reasonably required of him to prevent risks to his servants, he has done all that he owes them: *Smith v. Flint & P. M. R. Co.*, 46 M. 253.

61. A master is bound only to use ordinary care in protecting his servants from dangers that are not within their knowledge or observation: *Richards v. Rough*, 53 M. 212.

62. A master's liability for injuries to his servant from defective arrangements is not that of an insurer or guarantor if the defect was apparent to ordinary observation. It is a question of reasonable care and diligence in providing against it: *Batterson v. Chicago & G. T. R. Co.*, 49 M. 184.

63. An employer is not required to use every possible safeguard against accident to his employees from the machinery on his premises. Reasonable care is the requirement: *Lindstrand v. Delta Lumber Co.*, 65 M. 254.

64. An employer is not under obligation to his servants to make use of the safest or most recent mechanical appliances for the purpose of insuring the safety of his employees: *Fort Wayne, J. & S. R. Co. v. Gildersleeve*, 33 M. 133; *McGinnis v. Canada Southern Bridge Co.*, 49 M. 466.

65. Business establishments are not bound at their peril to use only the best machinery and implements and the safest methods: *M. C. R. Co. v. Smithson*, 45 M. 212.

66. Employers may use such machinery as they choose, provided it is sound, well made and kept in repair; and in an action for injuries caused by its use the question whether a different kind of machinery would not have been safer cannot be considered: *Richards v. Rough*, 53 M. 212.

67. Masters do not impliedly warrant the machinery and appliances used by their serv-

ants to be safe beyond any contingencies or even to be as safe as those of other employers: *Ibid.*

68. An employer who introduces improved and complex machinery must take such corresponding precautions to keep his employees from harm in using it as are customary with prudent men: *Swoboda v. Ward*, 40 M. 420.

69. A master is liable for injuries to his servant resulting from the master's negligence in exposing the servant to risks which the latter is incapable of appreciating: *Chicago & N. W. R. Co. v. Bayfield*, 37 M. 205.

70. An employer must furnish a suitable place in which his servant, with due care, may do his work without exposure to dangers that are not usual to his occupation as ordinarily performed: *Swoboda v. Ward*, 40 M. 420; *Smith v. Peninsular Car Co.*, 60 M. 501.

71. An employer is not liable in damages for injuries received by employees who have voluntarily assumed the risks of the employment with full knowledge of the methods employed: *M. C. R. Co. v. Smithson*, 45 M. 212.

72. An employee assumes the risks usually incident to the employment: *Fort Wayne, J. & S. R. Co. v. Gildersleeve*, 33 M. 183; *Quincy Mining Co. v. Kitts*, 42 M. 84; *Day v. Toledo, C. S. & D. R. Co.*, 42 M. 523; *Piqueño v. Chicago & G. T. R. Co.*, 52 M. 40; *Richards v. Rough*, 53 M. 212; *Gardner v. M. C. R. Co.*, 58 M. 594; *Hewitt v. Flint & P. M. R. Co.*, 67 M. 61; *Illick v. Flint & P. M. R. Co.*, 67 M. 632; *Tuttle v. Detroit, G. H. & M. R. Co.*, 122 U. S. 189.

73. And also those that ordinary observation makes apparent: *Kean v. Detroit Copper Mills*, 66 M. 277; *Illick v. Flint & P. M. R. Co.*, 67 M. 632.

74. An employee assumes the risks of his employment when the machinery used is not defective and the usual means are adopted to guard against accident: *Swoboda v. Ward*, 40 M. 420.

75. There is no breach of duty in employing a servant subject to the ordinary risks of the employment if the servant himself is aware of the risks and consents to encounter them: *McGinnis v. Canada Southern Bridge Co.*, 49 M. 466.

76. The only risks which a servant assumes are those which properly belong to his employment: *Chicago & N. W. R. Co. v. Bayfield*, 37 M. 205.

77. A servant does not assume the risk of the master's negligence, or of that of any one to whom the master entrusts his superintending authority: *Quincy Mining Co. v. Kitts*, 42 M. 84.

78. It seems that a master need not expressly notify his servant of a risk where the nature of the business and of the risk is such that the only effective notice he can have is from his own general experience and the visible presence of that from which the danger is to be apprehended: *M. C. R. Co. v. Smithson*, 45 M. 212.

79. The proprietor of a lime-kiln was in the habit of having the stone removed from the base of the kiln, as it was burned, and of pushing the mass, wedged into the crater above, down into the emptied space. When the mass gave way those who were upon it and crowding it down would step back to the margin of the crater to escape going down with it. The proprietor had an inexperienced laborer helping him at his work when an unusually large quantity of burned stone had been removed, and he did not warn him of the danger. When the mass dropped the workman fell with it and was burned to death. *Helä*, that his employer was liable for causing his death by negligence: *Parkhurst v. Johnson*, 50 M. 70.

80. Where extraordinary risks or latent dangers, of which the workmen, either from ignorance or inexperience, lack knowledge, attend the employment, the employer should caution such workmen accordingly: *Smith v. Peninsular Car Works*, 60 M. 501.

81. The infancy of an employee does not of itself give him a cause of action against his employer for setting him at dangerous work, if it appears that he was of average intelligence, that his duties were explained to him when he entered upon the employment, and that he had in mind its dangers and the purpose to avoid them: *McGinnis v. Canada South Bridge Co.*, 49 M. 466.

82. In an action against an employer for an injury caused by his setting plaintiff, a boy of thirteen years old, at work upon a dangerous machine, it is not proper to instruct the jury that if the employee was properly instructed the employer would not be liable; the questions whether the machine was dangerous, and whether the boy was too young to understand its dangerous nature, were for the jury: *Steiler v. Hart*, 65 M. 644.

(b) *Evidence; presumptions; burden of proof.*

83. The question whether a servant is acting within the scope of his employment depends upon facts, as to which the finding of a jury is conclusive: *Schulte v. Holliday*, 54 M. 73.

84. In an action for damages caused by the recklessness of defendant's servant in leaving his horse unhitched, it is proper for the identification of the turn-out to show that the name of defendant's firm appeared on the vehicle: *Ibid.*

85. A servant's long continued and notorious habit of leaving his master's horse unhitched may be shown in an action against the master for damage caused thereby: *Ibid.*

86. Where a person sued for damages caused by the recklessness of a driver in his service defends on the ground that the team belonged to a third person and that the driver was in his employment, it is proper to show that defendant and the third person had been in partnership until shortly before the injury: *Ibid.*

87. Where, in an action for injury caused by sparks from a burner, there was evidence that warranted the inference that the burner was in a defective condition, it was proper to show that when a change had been made after the damage was done the dangerous emission of sparks ceased: *Alpern v. Churchill*, 53 M. 607.

88. Testimony to prove want of reasonable care need not be such as to drive the jury to that conclusion: *Mynning v. Detroit, L. & N. R. Co.*, 67 M. 677.

And further as to evidence in actions for damages from negligence, see EVIDENCE, §§ 43-53, 75-84, 119, 124, 126, 142, 143, 156, 183, 189, 397, 400-402, 415, 424, 561, 562, 566-573, 577, 581, 599-605, 609-612, 884, 885, 924.

89. The owner of a stallion was sued for the value of a mare that was ruined by service *per rectum*. Held error to require plaintiff to show that such service was due to defendant's negligence; the inference would be that it was: *Peer v. Ryan*, 54 M. 224.

90. Negligence cannot be presumed in an action for injury arising therefrom, but it must be proved affirmatively: *Grand Rapids & I. R. Co. v. Judson*, 34 M. 506; *Grand Rapids & I. R. Co. v. Huntley*, 38 M. 537; *Marquette, H. & O. R. Co. v. Kirkwood*, 45 M. 51; *Brown v. Street R. Co.*, 49 M. 153; *Mitchell v. Chicago & G. T. R. Co.*, 51 M. 236.

91. Negligence must be affirmatively proved; but, like other facts, it may be shown by irresistible inference from circumstances: *Alpern v. Churchill*, 53 M. 607.

92. Negligence may sometimes be inferred from all the evidence taken together, even though the only direct evidence on the subject tends to negative it; and wherever the facts might support different inferences it is a question for a jury: *Crosby v. Detroit, G. H. & M. R. Co.*, 58 M. 458.

93. Negligence, when relied upon as a

cause of action, must be proved. It may be inferred from facts proved, but not from mere conjecture: *Hewitt v. F. & P. M. R. Co.*, 67 M. 61.

94. Negligence must be founded on competent evidence, and will not be presumed from the mere fact of the occurrence of the accident on the defendant's land: *Early v. Lake Shore & M. S. R. Co.*, 66 M. — (June 16, '87).

95. Negligence is not to be presumed, but must be affirmatively proved by the party alleging it in the manner pleaded; and the burden of proof is on plaintiff to show that defendant was entirely responsible for the injury complained of by reason of the neglect pleaded, and that the party injured did not contribute to it: *Mynning v. Detroit, L. & N. R. Co.*, 59 M. 257.

96. Negligence cannot be presumed against the defendant in an action for personal injury if it did nothing outside of the usual course of its business, unless that course of business was itself improper, or special circumstances required particular caution: *Mitchell v. Chicago & G. T. R. Co.*, 51 M. 236.

97. There is no presumption of negligence in not turning out of the travelled track to avoid colliding with a team hitched by the roadside, but negligence must be proved: *Joslin v. Le Baron*, 44 M. 160.

98. In an action for negligent injury plaintiff has the burden of showing defendant's negligence: *Le Baron v. Joslin*, 41 M. 313.

99. In an action to recover damages sustained because of defendant's negligence the burden of proof is on plaintiff to show that the injured party was exercising ordinary care at the time of the injury, and that the injury was the result of defendant's negligence: *Mynning v. Detroit, L. & N. R. Co.*, 67 M. 677 (Jan. 5, '88).

100. In an action for injury to a person crossing a defective bridge with a team it was error to charge that the fright of a team was no defence unless the jury found it was caused by something else than the defect, for that places the burden upon the defence of proving that it was something else; while in fact it was the plaintiff's duty to establish his own case and show the affirmative fact, if it existed, that the defect caused the fright: *Merkle v. Bennington*, 58 M. 157.

101. If a servant shows that he has been injured in consequence of an unusual risk due to his master's negligence the master has the burden of showing that the servant knew of the increased danger: *Swoboda v. Ward*, 40 M. 420.

102. In an action for injury caused by the conduct of a servant the burden of proof is not on plaintiff, after he has shown that at the time the injury was done the servant was in the employment of defendant in his regular business, to show further that he was acting in the course of his employment: *Schulte v. Holliday*, 54 M. 73.

103. Where a servant, while on an errand for his master, drove against a foot passenger, the master when sued for the injury has the burden of showing that the servant was not engaged in the course of his employment, but was driving around for pleasure: *Cleveland v. Newsom*, 45 M. 62.

(c) *Whether question of law or fact.*

104. A question of negligence is a question of fact as a general rule: *Detroit & M. R. Co. v. Van Steinburg*, 17 M. 99; *Lake Superior Iron Co. v. Erickson*, 39 M. 492; *Le Baron v. Joslin*, 41 M. 313.

105. The question of diligence or, reasonable care is generally one of mixed law and fact and never exclusively one of fact; juries may act upon it only where there is evidence tending to prove it; the existence of such evidence and its relevancy, and tendency to prove diligence, are questions of law; so, also, where there is no evidence tending to prove diligence, and where facts found or admitted are such that all reasonable men will be likely to draw from them the same inference: *Lake Shore & M. S. R. Co. v. Miller*, 25 M. 274.

106. If the question of negligence depends upon a disputed state of facts, or if the facts, though not disputed, are such that different minds might honestly draw different conclusions from them, the court cannot give positive instructions, but must leave the jury to draw their own conclusions upon the facts and upon the question of negligence depending upon them: *Detroit & M. R. Co. v. Van Steinburg*, 17 M. 99.

107. To warrant the court in any case in instructing the jury that the plaintiff was guilty of negligence the case must be so clear against him as to warrant no other inference: *Ibid.*

108. Where the case upon the facts is not free from doubt the court should submit the question of negligence to the jury: *Sheldon v. Flint & P. M. R. Co.*, 59 M. 172; *Mynning v. Detroit, L. & N. R. Co.*, 59 M. 257.

109. The question of negligence, where the testimony is conflicting, is for the jury: *Mynning v. Detroit, L. & N. R. Co.*, 64 M. 98.

110. Where there is any evidence of negli-

gence the case should go to the jury: *Nelson v. Lumbermen's Mining Co.*, 65 M. 283 (April 14, '87).

111. The question of negligence, where there is any evidence fairly tending to prove it, is for the jury: *Hassenyer v. M. C. R. Co.*, 48 M. 205.

112. Whether it is negligence to drive across a city street a horse harnessed, and drawing a whiffletree with a long chain attached, such as is commonly used in moving lumber, is a question for the jury, especially where the driver is shown to have been negligent in his manner of driving: *Bueck v. Lindsay*, 65 M. 105.

113. An employee was killed by a knife flying out of a rapidly revolving shaper-head, the first time it was used, and as soon as it reached its highest velocity, before it was applied to cutting lumber. The head was got up on a new plan, and differed from others in use, particularly in the device employed to check the knife's centrifugal tendency. The head was made accurately from the plan. *Held*, that the fact that the knife did fly out when fastened in as well as it was designed to be, had a tendency to prove that the design was bad, and that the case should have gone to the jury on the question whether the implement was reasonably safe and properly designed, and whether the principle involved in it was not a departure from safe methods as before applied: *Marshall v. Widdicomb Furniture Co.*, 67 M. 167.

114. In an action for injury from a mining blast the questions whether any notice was given before the blast was fired, and, if so, whether it was sufficient, are questions of fact; and if there is any conflict in the evidence it must go to the jury: *Beauchamp v. Saginaw Mining Co.*, 50 M. 163.

115. Whether, in a particular case, there is negligence in the management of a steam-engine as a means of locomotion in a highway is a question of fact for the jury: *Macomber v. Nichols*, 84 M. 212.

116. In an action for fatal injury the jury may properly consider how far the victim had knowledge of the danger and how far he relied on the action and the presumed knowledge of his superiors: *James v. Emmet Mining Co.*, 55 M. 385.

117. The degree of care required of a party is a question of law for the court and should not be left to the jury to determine, as it would be by a charge that he must exercise "such a degree of care as the law requires:" *Anderson v. Thunder Bay River Boom Co.*, 57 M. 216.

118. The question whether there is evidence tending to show negligence is one of law, to be determined from the testimony only. Where the court is in doubt, the case should go to the jury: *Palmer v. Harrison*, 57 M. 182.

119. If the jury are satisfied from all the circumstances that defendant was wanting in due care, plaintiff is entitled to their general verdict, though they are unable to describe or define the want of care; and special questions requiring them to state what defendant did or omitted should not be allowed: *Peer v. Ryan*, 54 M. 224.

II. RESPONDEAT SUPERIOR; NEGLIGENCE OF CONTRACTOR AND FELLOW-SERVANT; WHO DEEMED FELLOW-SERVANT.

120. Where a trespass is committed by the subordinate employees of a corporation, the doctrine *respondere superior* applies to the corporation rather than to its agent in charge: *Bath v. Caton*, 37 M. 199.

121. Where an employee is exercising a distinct and independent employment, and is not under the immediate control, direction or supervision of the employer, the latter is not responsible for the negligence or carelessness of the employee: *De Forrest v. Wright*, 2 M. 368.

122. So, where a public licensed drayman was employed to draw merchandise from a warehouse and deliver at the store of his employer, and through his carelessness a barrel of the merchandise rolled against and injured the plaintiff, the employer was held not liable: *Ibid.*

123. To render an employer liable for the fault or negligence of his employee, the injury complained of must arise in the course of the execution of some service lawful in itself, but negligently or unskillfully performed: *Moore v. Sanborne*, 2 M. 519.

124. A master is liable for an injury done by his servant in the course of his employment, where the latter acted carelessly and recklessly and in negligent disregard of his master's instructions, but not if the injury was wanton, wilful and intentional. Recklessness is only a high degree of negligence; the master's responsibility is not affected by the degree: *Cleveland v. Newsom*, 45 M. 62.

125. Acts not fairly or reasonably incident to the nature, character or purpose of the business in which the servant is employed, or not in the discharge of the duties entrusted to him, do not render the master liable: *Wiltse v. State Road Bridge Co.*, 63 M. 639.

126. The manufacturer of an elevator which had been in use two or three days sent an employee, at the purchaser's request, to see what was the matter with it. After taking the car to an upper floor the latter said to one of the purchasers, "Let us load it up," and the purchaser accordingly directed a servant to assist in the loading. The elevator fell while being loaded, and the servant was hurt. Held, that he had a right of action against the manufacturer, who was in possession by his employee: *Necker v. Harvey*, 49 M. 517.

127. A master is liable for the negligent driving of a servant, even while the latter is acting temporarily for a third person who has hired the team and its driver from the master: and it is immaterial that the person hiring expressly asked for the services of this particular driver: *Joslin v. Grand Rapids Ice Co.*, 50 M. 516.

128. When the keeper of a boat laid up in winter quarters has positive orders from the owner to allow no one on board without a permit, and, disregarding such orders, invites on board a person who is injured by falling through an open hatchway, the owner of the boat is not liable for injuries sustained thereby: *Caniff v. Blanchard Navigation Co.*, 66 M. 638 (July 7, '87).

When master not liable for servant's negligence causing fire to spread, see DAMAGES, § 408.

129. One who obtained a license from the city to encumber the street adjacent to his premises for the purpose of filling his ice-house, and hired another to do the work under a contract, was held liable for injuries to passers-by, arising from the latter's negligence, as for the negligence of an agent: *Durmstatter v. Moynahan*, 27 M. 188.

130. A husband or a father is not liable for an injury resulting from his wife's or his son's negligent driving, unless the use of the vehicle driven is in some way connected with his authority or fault: *Ricci v. Mueller*, 41 M. 214; *Brohl v. Lingeman*, 41 M. 711.

131. A corporation may be held liable for a contractor's neglect in not properly guarding against danger from an excavation in a public street: *Detroit v. Corey*, 9 M. 165.

That the negligence of a municipal officer does not render the municipality liable as for the negligence of an agent, see CITIES AND VILLAGES, § 419.

132. Where a mining corporation contracting for the removal of ore reserves to itself such arrangements as are necessary for the protection of workmen, it is liable for such injuries as happen to employees of the contract-

ors without the fault of the employees: *Lake Superior Iron Co. v. Erickson*, 39 M. 492.

133. A. leased his mine to B., B. agreeing to become responsible for any injuries to workmen, etc. A. retained no control over the mine, which was in an ordinarily safe condition. One of B.'s workmen was injured by a fall of rock in the mine. *Held*, that A. could not be made liable for damages: *Samuelson v. Cleveland Iron Mining Co.*, 49 M. 164.

134. Where a boom-company which has built a series of dams in a river lets to contractors the work of driving and delivering to itself at the mouth of the river a large quantity of its logs, it is liable for the damages caused to a third person by floods which the conditions of the contract rendered necessary in the contractors' operations: *McDonald v. Rifle Boom Co.*, 71 M. — (June 23, '88).

135. A bridge company is not liable to one who, in driving over its bridge, is injured by reason of his horse becoming frightened at objects displayed, negligently or otherwise, by the toll-keeper, on her premises, at the entrance of the bridge; such premises having been leased to the toll-keeper by the company, and being, during the continuance of the lease, beyond the company's control: *Wiltse v. State Road Bridge Co.*, 63 M. 689.

136. The extent to which a foreman was affected by intoxication when he gave directions to an employee is a question for the jury in an action by the employee for injuries sustained in obeying such directions: *Kean v. Detroit Copper Mills*, 66 M. 277.

137. Where a foreman and an inferior employee have equal knowledge of the danger accompanying an act required by the foreman to be performed in respect to certain machinery, the employee can comply with the order or not as he chooses, and the employer is not liable if he is injured in complying, even though the dangerous nature of the act is not explained to him by the foreman: *Ibid*.

138. An employer is not liable to an employee for injuries resulting from negligence, misconduct or unskilfulness of fellow-servants engaged in the same general employment, where the employer himself is not in fault: *M. C. R. Co. v. Leahey*, 10 M. 193; *Davis v. D. & M. R. Co.*, 20 M. 105; *M. C. R. Co. v. Dolan*, 32 M. 510; *Henry v. Lake Shore & M. S. R. Co.*, 49 M. 495; *Hewitt v. Flint & P. M. R. Co.*, 67 M. 61.

139. A servant assumes the risk of injury from the carelessness of fellow-servants, provided they have been prudently chosen and not retained in the employer's service after

he has knowledge of their unfitness or negligence: *Quincy Mining Co. v. Kitts*, 42 M. 84.

140. A servant assumes the risk of a fellow-servant's negligence, even though the latter is in a position of greater responsibility or a different line of employment, so long as both are in the same general business, so that the negligence of one may contribute to the danger of the other: *Ibid*.

141. Employers are bound to have safe rules of business, use care in selecting their immediate agents, and remove such persons or change such regulations as they believe to be unfit: *M. C. R. Co. v. Dolan*, 32 M. 510.

142. Employers are not bound to treat an agent as incompetent unless for some error or misconduct going to his general fitness: *Ibid*.

143. Employers have a right to trust that an agent or officer carefully chosen will use good judgment in making his appointments and doing his own duties, and to rest in that belief until, in the exercise of the general vigilance which devolves on them, they find they have erred: *Ibid*.

144. A master is liable for injuries to servants that spring from such negligent acts of fellow-servants as are due to their incompetency if the master himself has been negligent in selecting competent servants, or has kept incompetent ones after hearing of their unfitness, or when he might have heard of it by using ordinary care in making inquiry: *Hills v. C. & G. T. R. Co.*, 55 M. 487.

145. A master cannot, by delegating it to another, relieve himself of the duty of exercising due care in the employment and retention of competent servants, and, if he does delegate it to a general manager, foreman or superintendent, he remains responsible: *Quincy Mining Co. v. Kitts*, 42 M. 84.

146. Actions by employees against their employer, for injuries caused by fellow-servants, are based on the actual negligence of the defendant or of some representative who is held in law to personate him; and, where the business requires the employment of many servants, beyond the possible constant supervision of either the employer or of such representative, there can be no negligence without the failure to use such precautions in choosing agents and guarding against perils as diligent prudence and foresight require: *Smith v. Flint & P. M. R. Co.*, 46 M. 258.

147. Where an employer has shown due care in the choice of his servants, no presumption of the latter's unfitness arises afterwards; but if it appears that a servant has been repeatedly guilty of carelessness or incompe-

tency it is for the jury to determine whether the master knew of it or would have known if he had exercised ordinary care: *M. C. R. Co. v. Gilbert*, 46 M. 176.

148. In an employee's action against his employer for injuries sustained by being caught in a machine, when the injury complained of is claimed to have resulted from obedience to a foreman's directions, evidence that the foreman was a man of intemperate habits, and that he had been discharged for getting drunk but had been reinstated, is competent: *Kean v. Detroit Copper Mills*, 66 M. 277.

149. The negligence of a servant in a particular instance cannot well be shown by testimony of his incompetency or carelessness on other occasions; but if it is also shown that the master knew of the cases or that they were of such a character and so frequent that he must have known of them, he, the master, may be chargeable with negligence in retaining such servant: *M. C. R. Co. v. Gilbert*, 46 M. 176.

150. A mining captain who has the entire management of the mine without direction or interference by the owner occupies the owner's place and is not a mere fellow-servant of a laborer employed in the mine, even though he was not appointed directly by the owner, but only by the owner's agent. And the owner is liable for his negligence: *Ryan v. Bagaley*, 50 M. 179.

151. A common workman employed about a mine, but not himself a miner, is not a fellow-employee of the miners in any such sense that he cannot recover for an injury caused him by the mining operations. And his employer is bound to see that the premises where he works are reasonably safe: *James v. Emmet Mining Co.*, 55 M. 335.

152. One who has furnished suitable materials and employed competent carpenters to construct scaffolding to be used by them in putting the cornice upon his house is not liable, where the same scaffolding is used by painters hired to paint the cornice, for injuries caused to one of the painters by the breaking of the scaffolding. The carpenters and painters are fellow-servants: *Hoar v. Merritt*, 62 M. 386.

153. Where defendant had given another person full control of erecting a building and of the men employed thereon, he was held liable for an injury to a workman from such person's negligence, even though such person himself worked about the building: *Slater v. Chapman*, 67 M. 523.

154. A boat's mate and her captain are fellow-servants, and if one is injured through

the other's negligence the owner of the boat is not liable: *Caniff v. Blanchard Navigation Co.*, 66 M. 638.

155. Whether one who works at odd jobs around a mill-yard wherein are his employer's saw-mill and salt-block, and who occasionally loads salt on a barge for market, is the fellow-servant of men in the salt-warehouse handling barrels, so as to preclude his recovery for injuries received from a descending elevator through their negligence, *querre*: *Sell v. Rietz Lumber Co.*, 70 M. 479.

And see RAILROADS, VI, (b).

III. CONTRIBUTORY NEGLIGENCE.

(a) *In general; what constitutes.*

156. Where an injury of which a plaintiff complains is the result of his own negligence or fault, or of the fault of both parties, without intentional wrong on the part of the defendant, no action can be maintained: *Williams v. M. C. R. Co.*, 2 M. 259.

157. In an action to recover for an injury arising from the defendant's negligence in carrying on his lawful business without wanton or intentional wrong, plaintiff cannot recover if his own negligence directly or proximately contributed to produce the injury: *Lake Shore & M. S. R. Co. v. Miller*, 25 M. 274.

158. One cannot recover for an injury caused by another's negligence if his own negligence contributed thereto: *M. C. R. Co. v. Leahey*, 10 M. 193; *Le Baron v. Joslin*, 41 M. 313, 44 M. 160.

159. One who voluntarily exposes himself to evident risks caused by another's negligence cannot recover against the latter for bodily injuries resulting from such exposure, even though the exposure was for the purpose of saving property or the life of an animal: *Cook v. Johnston*, 58 M. 437.

160. One cannot recover for injury to his horse and vehicle resulting from defendant's negligence in driving on the wrong side of a highway, if by using ordinary care himself he might have avoided the collision which caused it: *Daniels v. Clegg*, 28 M. 32.

161. One driving a carriage on a dark night is not guilty of contributory negligence, if, hearing a buggy coming at full speed behind him, he takes the side of the road that belongs to him, though it turns out that if he had remained where he was he would have escaped injury: *Flower v. Witkovsky*, 69 M. 371 (April 13, '88).

162. Contributory negligence is no defence

if defendant's own conduct is wanton, wilful or reckless, and results in the injury complained of: *Bouwmeester v. Grand Rapids & I. R. Co.*, 68 M. 557.

163. Contributory negligence by the owner of cattle is no defence to his action for injuries to them resulting from defendant's neglect to maintain side-fencing as required by statute of railroads: *Flint & P. M. R. Co. v. Lull*, 28 M. 510; *Grand Rapids & I. R. Co. v. Cameron*, 45 M. 451.

164. In an action for negligent injury negligence by plaintiff which did not contribute to the injury need not be regarded: *Marcott v. Marquette, H. & O. R. Co.*, 47 M. 1.

165. Contributory negligence presumes a careless act or omission: *Swoboda v. Ward*, 40 M. 420.

166. It is not necessarily negligence to take a choice of risks, or to do, without freedom of choice, an act involving danger; but it is negligence to risk life or limb merely to escape inconvenience or mental vexation: *Lake Shore & M. S. R. Co. v. Bangs*, 47 M. 470.

167. Courts are bound to know that there is a difference between reasonable care and no care at all, or utter negligence, and that if one who has good reason to apprehend danger does not make some use of his faculties to ascertain and avoid it, he does not exercise the ordinary or reasonable care demanded by the circumstances: *Lake Shore & M. S. R. Co. v. Miller*, 25 M. 274.

168. But no one is bound to keep a constant lookout against dangers which could not be expected to exist so long as ordinary care is used by those whose action only can cause them: *Grand Rapids & I. R. Co. v. Martin*, 41 M. 667.

169. Contributory negligence in order to constitute a defence must have been negligence contributing to the injury itself for which the action is brought. If it was subsequent negligence, and only contributed to increase the injurious consequences, it goes to the amount of recovery only: *Brown v. Marshall*, 47 M. 576.

170. Every one may use his own property as he pleases, provided he does not use it to the injury or annoyance of others; and his own neglect of his own property does not excuse another for injuring it, nor constitute contributory negligence: *Underwood v. Waldron*, 38 M. 232.

170a. Where a duty rests upon parties jointly, and is neglected by both, neither can sue the other for damages resulting from their mutual faults: *Ibid.*

171. One who invites another to bring upon

his premises for use a dangerous implement, knowing it to be such, will take upon himself the consequences which naturally follow: *Marquette, H. & O. R. Co. v. Spear*, 44 M. 169.

172. Contributory negligence cannot be predicated of the erection, in a customary, lawful and proper manner, of buildings constructed of the usual material upon the owner's premises, even though there are establishments in the neighborhood from which there is risk of fire or damage. And the owner of such buildings is not bound to incur the expense of providing his buildings with extra safeguards: *Alpern v. Churchill*, 53 M. 607.

173. The owner of a steam saw-mill near which another person builds a railroad and runs an engine is not guilty of contributory negligence, though, having knowledge of the dangerous character of the engine in the way of emitting sparks, he allows the combustible offal of the mill to accumulate upon his premises as he did before the railroad was built: *Kendrick v. Towle*, 60 M. 363.

174. One who is familiar with boats laid up in winter quarters, and with the location and condition of their hatches, is guilty of contributory negligence if he fails to exercise care in avoiding an open hatchway on a boat so laid up: *Caniff v. Blanchard Navigation Co.*, 66 M. 688.

175. One who in broad daylight heedlessly steps under a descending elevator is guilty of contributory negligence: *Hutchins v. Priestley E. W. & S. Co.*, 61 M. 252.

176. A horse, left at a livery-stable over night, got untied and ate from a convenient bag of corn. In the morning his owner did not water him, but drove him eighteen miles in the heat, and the horse became injured. Held, that the stable-keeper could be held responsible in case, only, it was found that he was guilty of negligence, and that the owner of the horse had not contributed to the injury, either in fastening the horse or in improperly driving him: *Dennis v. Huyck*, 48 M. 620.

177. Sparks from a steam-thresher set fire to some hay stored on the premises. The owner of the hay was plowing in the same field, but had made no protest against the use of the thresher. In an action by him for the negligent destruction of the hay, it was held that in the absence of proof that he had any special knowledge of the risk of using such machinery, or of the skill and competency of those who had charge of it, he was entitled to an instruction that if he did not consent to, or participate in, what was done, he was not guilty of contributory negligence: *Moomey v. Peak*, 57 M. 259.

178. One cannot recover for an injury done his wagon by collision if his driver's want of ordinary care contributed to produce the collision: *Mabley v. Kittieberger*, 37 M. 860.

179. It is not necessarily negligence to walk in the travelled part of a city street if it is not shown that it is usually so occupied with teams as to make foot travel imprudent: *Cleveland v. Newsom*, 45 M. 62.

180. One passing along the sidewalk of a public street has a right to expect some warning before any sudden movement across it of a standing train of cars, and when injured by the sudden backing of one, without warning, across the walk, there would have to be very positive proof of negligence on his part to defeat his right of recovery: *McWilliams v. Detroit Central Mills*, 31 M. 274.

181. Where it appears that a plaintiff suing for an injury caused by an obstruction of a highway was using the highway on a proper errand at a place where it was habitually used and where an obstruction making it impracticable or reckless to pass would have been unlawful, and where plaintiff's testimony shows ordinary care, there is no such proof of contributory negligence as authorizes the court to take the case from the jury: *Laughlin v. Grand Rapids Street R. Co.*, 62 M. 220.

182. A person who, in the lawful use of a highway, meets with an obstacle or other cause of insufficiency, may yet proceed if it is consistent with reasonable care so to do; and that is generally a question of fact for the jury, depending on the nature of the obstruction or defect, and all the surrounding circumstances: *Harris v. Clinton*, 64 M. 447.

183. Testimony showing that plaintiff's wife was sick, and that he was consequently anxious to reach home, when it is admitted that he was able to leave home to attend to his ordinary business, cannot be shown to excuse his incurring a risk that he might not otherwise have taken in driving along a dangerous highway: *Ibid.*

184. A man walking along a country road upon a dark night stepped into a hole, for which he was, however, on the lookout. *Held*, that his knowledge of the defect did not necessarily establish his negligence, but was only a fact for the jury to consider in deciding whether he was negligent or not: *Lowell v. Watertown*, 58 M. 568.

185. Where, in an action for a personal injury, the evidence shows that defendant took up a sidewalk and dug a ditch across and left it exposed at night, and that plaintiff stepped off the walk upon the ground and then fell into the ditch, the case should not be taken

from the jury on the ground of contributory negligence: *Flater v. Fey*, 70 M. 644 (June 15, '88).

186. A man was driving a traction-engine across a bridge. The bridge gave way and the driver's foot slipped and caught in the chain so that he was seriously hurt. *Held*, that in an action for the injury the court should have charged, if there was evidence to support the instruction, that the driver was negligent in having no guard for his foot if he knew of the danger, or in removing it if there had been one: *Stebbins v. Keene*, 55 M. 552.

187. One who crosses a bridge with an unusually heavy load does so at his own risk: *Fulton Iron Works v. Kimball*, 52 M. 146.

188. There is contributory negligence in driving across a bridge so recklessly and turning off from it so abruptly as to suffer injury in consequence of catching the wheel in or upon some crack or obstruction not in the travelled part of the way. And it is no excuse that others are similarly careless, especially if one is not familiar with the bridge and cannot therefore rely upon the carelessness of others: *Abernethy v. Van Buren*, 52 M. 388; *Beckwith v. Van Buren*, 66 M. 89.

189. Where a horse in a highway was driven loose to a watering place and sustained an injury from a heap of stones left by defendant in the highway near his own fence and eight or ten feet outside of the travelled road, *quere*—the court being equally divided—whether defendant could be held liable: *Bennett v. Hazen*, 66 M. 657.

As to contributory negligence of passengers on railroad and street cars, see CARRIERS, §§ 128, 132, 134-150.

As to contributory negligence in actions for injuries against railroads, see RAILROADS, VI, (c), (d); and in actions against municipal corporations for defects in highways, streets or bridges, see HIGHWAYS, §§ 176-219.

190. Where a clandestine intruder upon another's premises is accidentally injured while the lawful possessor is expelling him, his contributory negligence should be considered in fixing responsibility therefor: *Taylor v. Adams*, 58 M. 187.

(b) *In case of employees.*

191. A fairly intelligent youth of sixteen had his hand mutilated by the jointer in a planing-mill where for two weeks he had been at work. He had had no previous experience with such machinery, but the dangerous nature of the jointer was manifest to any one who looked at it, and he would not have been hurt if he had

not laid his hand, without looking, upon the table in which the jointer operated. *Held*, that the injury was accidental, and he could not recover for it: *Palmer v. Harrison*, 57 M. 182.

192. It is not contributory negligence for an employee who is in doubt about the safety of the place where he has to work to defer to the opinions and assurances of those who are supposed to know, and from their position are bound to have special knowledge, as to whether it is safe or not: *Lake Superior Iron Co. v. Erickson*, 39 M. 492.

193. Where a servant in obeying his master's orders incurs the risk of machinery which it is reasonably probable may be safely used by extraordinary caution and skill, he is not guilty of concurring negligence: *Chicago & N. W. R. Co. v. Bayfield*, 37 M. 205.

194. A servant has a right to trust the prudence and caution of his employer, and to rely upon his not putting him in charge of implements which, from improper construction or other cause, are so dangerous that a prudent man would not make use of them: *Fort Wayne, J. & S. R. Co. v. Guildersleeve*, 33 M. 133.

195. An employee has a right to assume that it is safe to do what he is hired to do unless his knowledge warns him it is not: *James v. Emmet Mining Co.*, 55 M. 335.

196. An employee is not bound, before beginning work, to familiarize himself with the condition of all the machinery he may come in contact with. It is enough if he knows his own work and the risks directly connected with it: *Swoboda v. Ward*, 40 M. 420.

197. An employee who voluntarily remains in service in spite of defects in the machinery used and in the means employed to guard against accident, and without any promise by the employer to correct them, is guilty of contributory negligence, and cannot recover for any injury he may suffer in consequence: *Ibid*.

198. A servant who continues without objection to use machinery which he has found to be unsafe assumes the risk, and cannot recover for injuries which he may receive in consequence of doing so: *Richards v. Rough*, 53 M. 212.

199. A workman in a grain elevator stayed on the premises during the time allowed him for his dinner. Within that time he was ordered to aid in opening a ventilator, and, by reason of a defect, sustained injury without fault on his part. *Held*, that his employer

was liable: *Broderick v. Detroit Union R. R. etc. Co.*, 56 M. 261.

200. An employee in an iron foundry was injured in consequence of the slipping of a fellow-workman on an icy path, over which they were carrying, under orders to do so, a ladle full of molten iron. *Held*, that the workmen should have been warned of the dangerous character of the service arising from the contact of water and ice with melted iron, and that without such warning they could not be charged with contributory negligence in not declining the service, or in not removing the ice before going upon it: *Smith v. Peninsular Car Works*, 60 M. 501.

201. A laborer in a saw-mill who undertakes to saw a piece of scantling by leaning over the saw with one arm stretched across it, so that, if he slips, the destruction of his arm is inevitable, is guilty of contributory negligence: *Lindstrand v. Delta Lumber Co.*, 65 M. 254, 68 M. 261.

202. A direction to a workman employed in loading slabs on a defective dump-car to fix it up as well as he can does not direct him to incur danger in using a circular saw to which he is not accustomed, nor, if it did, would it justify him in so doing, or in being careless in his use of the saw: *Ibid*.

203. While passing from a pit-mine on an inclined track upon which a "skip-car" used in taking out ore was run, and which track was generally used by the men, it being the most convenient though not the only way of reaching the mine, an employee was struck by the descending car lowered by the foreman's direction without the usual signal or warning. In an action for the injury received, *held*, that the question of plaintiff's contributory negligence was for the jury: *Luke v. Wheat Mining Co.*, 71 M. — (July 11, '88).

204. A workman employed in a saw-mill to carry slabs from the gang-plank, while pulling backwards at one that was too heavy for one man to carry, slipped on some wet bark and fell against certain cog-wheels that caught his pantaloons and injured him. He had not been warned and did not know that the wheels were uncovered. *Held*, that the question whether he was guilty of contributory negligence ought to have been left to the jury: *Swoboda v. Ward*, 40 M. 420.

As to when the employee of a railway company will be precluded from recovering for injuries by reason of his knowledge of and failure to object to defects in appliances or method of doing business, see RAILROADS, VI, (a).

(c) *Effect of age, sex, etc.*

See RAILROADS, §§ 430-434.

205. In judging of negligence all the circumstances are to be taken into the account, and among others the age and sex of the person injured, so far as these are important: *Hassenyer v. M. C. R. Co.*, 48 M. 205.

206. Duty can only be predicated of one who has capacity to understand and perform it; and therefore a child not of an age or discretion to understand the danger in riding upon the front platform of a street-car cannot be charged with negligence in so doing: *East Saginaw C. R. Co. v. Bohn*, 27 M. 508.

207. The law does not exact of any one judgment or caution not naturally to be expected from persons of his age and capacity: *Hargreaves v. Deacon*, 25 M. 1.

208. Age and sex should be considered in deciding the question of the negligence of one who had not avoided a collision on the highway; if the care is such as would ordinarily be taken by a person of the age and sex of the party concerned there is no negligence: *Daniels v. Clegg*, 28 M. 32.

209. The caution required of a child riding on a railroad train is according to his maturity and capacity, to be determined by the circumstances in each case; and the degree of discretion in avoiding danger depends upon the child's age and knowledge: *Ecliff v. Wabash, St. L. & P. R. Co.*, 64 M. 196.

210. The age, intelligence and experience of one who has suffered from an injury are admissible, as they help determine whether he has been guilty of contributory negligence: *Swoboda v. Ward*, 40 M. 420.

211. The age and intelligence of a laborer injured by machinery, and his experience in the use of such machinery, may be considered by the jury in an action by him for the injury: *Huizaga v. Cutler & S. L. Co.*, 51 M. 273.

212. The age of a person injured in crossing a railway track in a cutter driven by another may properly be considered in an action against the company for the injury, as bearing upon contributory negligence: *Young v. Detroit, G. H. & M. R. Co.*, 56 M. 430.

213. Children must be expected to act upon childish instincts, and those who are answerable for their safety must take precautions accordingly, and must expect them to meddle with anything that is likely to tempt them if left exposed to their view and within their reach: *Powers v. Harlow*, 53 M. 507.

214. A child of tender years is not expected or required to exercise the same degree of care

as an adult, and one cannot be guilty of contributory negligence unless failing to exercise the degree of care that would be reasonably expected of a child of her sex, age and intelligence, under all the surrounding circumstances: *Cooper v. Lake Shore & M. S. R. Co.*, 66 M. 261.

215. When contributory negligence is sought to be attributed to a child the child can only be held to that degree of care which may reasonably be expected from one under the same conditions, of the same age, sex, intelligence and judgment: *Baker v. Flint & P. M. R. Co.*, 68 M. 90.

216. It is not a rule of law that a less degree of care in circumstances of danger is required in a woman than in a man; and an instruction to that effect is erroneous. The rule of reasonable care and prudence knows nothing of sex: *Hassenyer v. M. C. R. Co.*, 48 M. 205.

As to contributory negligence of person intoxicated, see CARRIERS, §§ 150, 151.

(d) *Evidence; burden of proof; question of fact or law.*

217. Contributory negligence cannot be shown by the statement of one who had no personal knowledge of it: *Hitchcock v. Burgett*, 38 M. 501.

218. In an action to recover damages arising from a collision on a highway, the burden of proof is on the plaintiff to prove negligence and misconduct on the other's part, and to show ordinary care and diligence on his own: *Daniels v. Clegg*, 28 M. 32.

219. In cases of collision of vessels the burden of proof is on plaintiff not only to show negligence on defendant's part, but ordinary care on his own: *Drew v. The Chesapeake*, 2 D. 33.

220. If plaintiff brings action for a negligent injury, and the action of the two parties must have concurred to produce it, it devolves upon him to show that he was not guilty of negligence; and if he gives no evidence to establish that fact, the court may properly instruct the jury that they should return a verdict for defendant: *Detroit & M. R. Co. v. Van Steinburg*, 17 M. 99.

221. In an action for negligent injury plaintiff may show that the person injured had exercised due care, and had not contributed to the injury; this need not be shown by direct evidence, but may be inferred from the circumstances: *Billings v. Breinig*, 45 M. 65.

222. In an action for a negligent injury the burden of proof is on plaintiff to show that

she acted with due care, or that her own negligence did not contribute to the injury, as well as that the company was guilty of such negligence. It was error to charge that "the plaintiff is not bound to prove more than enough to raise a fair presumption of negligence on the part of the defendant, and of resulting injury to herself, and if she does this, she is entitled to recover unless the defendant produce evidence sufficient to rebut the presumption:" *L. S. & M. S. R. Co. v. Miller*, 25 M. 274.

223. The burden of showing that plaintiff in an action for a railway injury was guilty of contributory negligence is upon defendant: *Guggenheim v. L. S. & M. S. R. Co.*, 66 M. 150 (June 9, '87).

224. In an action for negligent injury, if the proofs are such that reasonable minds may differ as to the fact of contributory negligence, the case should go to the jury; its absence need not be conclusively shown: *Teipel v. Hilsendegen*, 44 M. 461.

225. Contributory negligence depends on what the party is bound to expect, and the case should not be taken from the jury when to do so will prevent their giving to either party the benefit of any inference which might be drawn from a comparison of all the facts: *Staal v. Grand Rapids & I. R. Co.*, 57 M. 240.

226. The fact of contributory negligence is for the jury to determine from all the circumstances, if the facts tending to establish it are disputed, and especially if it appears that the plaintiff had exercised care and would not have been likely to be hurt if defendant had done his duty: *Palmer v. Detroit, L. & L. M. R. Co.*, 56 M. 1.

227. When the fact of contributory negligence depends on the credibility of witnesses or upon inferences in which intelligent persons may honestly differ, it is a question for the jury: *Swoboda v. Ward*, 40 M. 420.

228. In an action for injury the neglect of any precaution by plaintiff can only raise a question of contributory negligence for the jury: *Lewis v. Flint & P. M. R. Co.*, 54 M. 55.

229. Where the whole of the testimony and all legitimate inferences therefrom show that injury arose from want of due care on the part of the injured person, the question of contributory negligence is one of law for the court: *Mynning v. Detroit, L. & N. R. Co.*, 67 M. 677.

NEW TRIAL.

See, generally, PRACTICE, III, (g). Also, *CARRIES*, §§ 963, 964, 968, 984, 1263-1266, 1275-

1292; EJECTMENT, IX; EQUITY, §§ 518-522; ERROR, §§ 57, 702-717; MANDAMUS, §§ 65-71.

NOTARY PUBLIC.

See AFFIDAVITS, §§ 5-8; ATTACHMENTS, §§ 168; BANKS, § 4; BILLS AND NOTES, §§ 101, 110, 114; CONSTITUTIONS, § 635; CONVEYANCES, §§ 60-79, 81-89, 91-93.

NOTICE.

I. WHAT CONSTITUTES NOTICE.

- (a) *In general.*
- (b) *Notice to one person as binding another.*
- (c) *Notice imparted by possession.*
- (d) *Notice imparted by recitals in deeds, etc.*
- (e) *Lis pendens.*
- (f) *Notice to grantees of a bona fide purchaser.*

II. EFFECT OF NOTICE.

III. PURCHASERS WITHOUT NOTICE.

- (a) *In general.*
- (b) *Burden of proof as to notice.*

As to the requisites, etc., of notices in particular proceedings, see the appropriate titles; see, also, the Index.

As to who are protected against unrecorded instruments, see RECORDING ACTS, IV.

As to what is sufficient change of possession, in case of chattel mortgage, to constitute notice thereof, see CHATTEL MORTGAGES, §§ 59-62.

I. WHAT CONSTITUTES NOTICE.

- (a) *In general.*

As to effect of record as notice, see RECORDING ACTS, III.

1. In equity that is notice of a right which is sufficient to put parties on inquiry: *Norris v. Showerman*, 2 D. 16.

2. One is chargeable with notice, not only where the evidence raises a presumption that he knew, but where there is just ground for inferring that reasonable diligence would have led him to a discovery of the truth: *Oliver v. Sanborn*, 60 M. 346.

3. A person is chargeable with constructive notice when, having the means of knowledge, he does not use them. If he has knowledge of such facts as would lead any honest man, using ordinary caution, to make further inquiries, and does not make, but studiously

avoids making, the obvious inquiries, he must be taken to have notice of those facts which, had he used ordinary diligence, would have been readily ascertained: *Converse v. Blumrich*, 14 M. 109; *Hains v. Hains*, 69 M. 581 (April 20, '88); *Jackson, L. & S. R. Co. v. Davison*, 65 M. 437.

4. But if he inquires of the party in interest, he will not be responsible for not pushing his inquiries further, unless the answer he receives corroborates other information, or reveals the existence of other sources of information: *Converse v. Blumrich*, 14 M. 109.

5. One cannot claim to be ignorant where reason and experience show that knowledge would be a necessary consequence of the facts established: *Michigan Mutual Life Ins. Co. v. Conant*, 40 M. 530.

6. The laws of constructive notice can never be so applied as to relieve a party from responsibility for actual misstatements and frauds: *Converse v. Blumrich*, 14 M. 109.

7. Where one purchases property which was subject to an equity in the seller's hands, it is enough that he have knowledge of such facts and circumstances indicating the equity as would have led a prudent man to inquire in regard to it, and that he omitted to do so: *James v. Brown*, 11 M. 25.

8. Such notice as men usually act upon in the ordinary affairs of life is all that can be required to charge a subsequent purchaser or encumbrancer. If it is sufficient to direct attention to the prior right and to enable its nature to be ascertained by inquiry, it is enough: *Willcox v. Hill*, 11 M. 256.

9. One is not bound to investigate mere neighborhood rumors as notice: *Larzelere v. Starkweather*, 38 M. 96.

10. Where a person is entitled to notice, and has not stipulated or consented that it may be transmitted by mail, he is not bound by it if so sent until actually received: *Burhans v. Corey*, 17 M. 282.

11. Third persons are not bound to take notice of arrangements to extend times for payment or to exchange securities, and cannot be presumed to have knowledge thereof: *Morgan v. Michigan Air Line R. Co.*, 57 M. 430.

12. A purchaser of premises, a mortgage upon which has been discharged of record, who is informed by the mortgager that such mortgage is still outstanding, and is held by a certain named person, is affected with notice that the discharge was recorded by mistake, and is not protected by an abstract showing the mortgage to have been discharged: *Ferguson v. Glassford*, 68 M. 36.

13. C. gave a mortgage misdescribing the

premises, but in another mortgage, referring to the first, described them differently. A lawyer, familiar with the land and owning a partnership interest in an adjacent lot, after examining these mortgages and noticing the discrepancy, sold his lot to C. and took from him a mortgage covering land that the first one ought to have covered. C. then discovered the mistake in the first mortgage and gave a new one correcting it. *Held*, that the lawyer had had sufficient notice to put him on inquiry, and could not defend against the foreclosure of the corrected mortgage on the ground of the priority of his own: *Michigan Mut. Ins. Co. v. Conant*, 40 M. 530.

14. A purchaser as against a previous unrecorded deed is charged with notice not only of all that is definitely communicated to him, but of all that a proper use of that information would have enabled him to ascertain: *Oliver v. Sanborn*, 60 M. 346.

15. Notice of an unrecorded deed can hardly be made out by proof of blind remarks and of ambiguous and misleading hints to a subsequent mortgagee, which he did not understand in the sense which they must bear to put him on inquiry: *Shepard v. Shepard*, 36 M. 173.

16. Advertising and selling a chattel subject to a mortgage thereon is, to purchasers, such notice of the mortgage as dispenses with filing: *Kellogg v. Secord*, 42 M. 318.

17. A corporator is not charged with constructive notice of corporate acts and may deal with the corporation as a stranger may, if his personal connection with corporate action is not such as to notify him of reasons to the contrary: *Rice v. Peninsular Club*, 53 M. 87.

18. One who, before taking a mortgage, learns from the mortgager that a third person claims some interest in the land, takes with constructive notice of all that reasonable inquiry would have disclosed; e. g., as to matters involved in a suit pending between such third party and the mortgager wherein the former claims that the title is his, and that the latter's was, under a patent, procured by fraud from the state; and he can claim no more than his mortgager's rights: *Jackson, L. & S. R. Co. v. Davison*, 65 M. 437 (April 20, '88).

19. A mortgager gave a warranty deed of the land subject to the mortgage. A woman, acting through her husband, bought it from the mortgager's grantee. The mortgage was foreclosed and the mortgager bid in the land. The woman filed a bill to remove the cloud from her title and to compel the mortgager to convey to her the interest he received by the

foreclosure sale. The court found that she was not a *bona fide* purchaser without notice that the land was sold subject to the mortgage, and held that it would be unjust to compel a conveyance without payment of the mortgage, and dismissed the bill with costs: *Berry v. Whitney*, 40 M. 65.

20. One dealing in good faith with a person in whom legal title stands has no concern with, and need not inquire into, any parol understanding of which he has no notice, and by which some equitable interest in the land is claimed by another: *Hull v. Swarthout*, 29 M. 249.

21. In purchasing from a tenant in common, one has a right to suppose the usual relations exist, and is not bound by partnership equities between the tenants affecting the land in their hands: *Adams v. Bradley*, 12 M. 346.

22. A partnership relation is not notice to a purchaser in good faith that land held by the partners from different grantors and under deeds of different dates is partnership property, even if held in common and used for partnership purposes: *Reynolds v. Ruckman*, 35 M. 80.

23. A grantee gave back a purchase-money mortgage before delivery of the deed. Afterwards, at the time the deed was actually delivered, this grantee mortgaged the premises to a third party in whose presence the delivery was made, and who had no notice of the former mortgage. Held, that the delivery of the deed in the latter's presence was notice to him that until then the mortgager had no title to encumber to his prejudice. The second mortgage was accordingly given precedence of the first: *Heffron v. Flanagan*, 37 M. 274.

24. One who purchases premises covered by an undischarged mortgage, the mortgagee being well known and easily accessible to him, and he having knowledge of facts sufficient to put a prudent man on inquiry, cannot claim to be a purchaser without notice of the equities of the mortgage simply because the mortgager has possession of, and exhibits to him, the notes described in the mortgage; he stands in no better position than the mortgager himself: *Bozheimer v. Gunn*, 24 M. 372.

25. A prior mortgagee who merely fails to make inquiry is not chargeable with notice of a subsequent mortgage; he should have actual knowledge: *James v. Brown*, 11 M. 25.

See MORTGAGES, §§ 463, 464.

26. Filing in the register's office a certified copy of an attachment on lands is not notice to third persons having prior rights: *Columbia Bank v. Jacobs*, 10 M. 849; *Millar v. Babcock*, 25 M. 187; *French v. De Bow*, 38 M. 708.

27. A sheriff's notice of attachment was held ineffectual where by mistake it failed to describe the land attached: *Barnard v. Campau*, 29 M. 162.

28. Notice of the levy of an attachment on land must be definite and certain to be good as against persons holding in good faith under conveyances subsequent to the institution of suit: *Davis Sewing Machine Co. v. Whitney*, 61 M. 518.

29. A certificate of levy of execution on "lot seven of lots 12, 13 and 14 of the Labrosse and Baker farms in Detroit" is not sufficient to charge a purchaser with notice that it is intended to cover lot 7 of John Gibson's subdivision of lots 12, 13, 14 and 18 of said farm according to a specified recorded plat: *Burrows v. Gibson*, 42 M. 121.

30. Where the terms of a contract providing for the sale and disposition of the proceeds of an accompanying mortgage are such that no one in the possession of his senses would be apt to execute said instrument, an assignee having notice of the contract is chargeable with notice of the mortgager's incompetency: *Kent v. Mellus*, 69 M. 71.

31. Parties claiming through a general assignee are bound, in case of a controversy, to inquire of him for any facts in his knowledge bearing upon it, and failure to do so is gross negligence: *Ryerson v. Eldred*, 23 M. 537.

32. All persons contracting with a public officer for public work are bound to take notice of the provisions of the statute under which the work is let: *Mackenzie v. Baraga Treasurer*, 39 M. 554.

33. Notice to one of several trustees, of the revocation of an oral license, is notice to all: *Druse v. Wheeler*, 26 M. 189.

34. Notice of a prior encumbrance to charge a subsequent encumbrancer or purchaser need not come from a party in interest: *Willow v. Hill*, 11 M. 256.

35. A legal notice must disclose on its face that it emanates from some person or court claiming to have the power to act in the manner indicated by the notice: *Niles v. Ransford*, 1 M. 388.

Failure to make further inquiry, held, in a particular case, not to charge mortgagee with notice: CHATTEL MORTGAGES, § 121.

(b) *Notice to one person as binding another.*

See, also, AGENCY, VII, (c).

36. A notice to an attorney is binding upon his client: *Dickinson v. Dustin*, 21 M. 561.

37. A mortgagee of land against which at-

attachment proceedings have been started is not without notice where his counsel, before advancing the money secured by the mortgage, recognized the attachment as a lien to be got rid of in order to clear the title, and caused money to be tendered for that purpose: *Chase v. Welsh*, 45 M. 345.

38. An attorney's knowledge of matters not within his employment is not notice to his client: *Larzelere v. Starkweather*, 38 M. 96.

39. A client is not chargeable with notice of facts known to his lawyer if the latter did not obtain this knowledge while doing business for him: *Warner v. Hall*, 58 M. 871.

40. Notice to one's agent or to those who conduct one's business for him is actual notice to him: *Baker v. Pierson*, 5 M. 456.

41. Notice to a person acting in a very humble or inferior capacity is not notice to his employer: *M. C. R. Co. v. Dolan*, 32 M. 510.

42. Notice to the foreman of a mill that sparks from its chimney are endangering adjacent property is, in the owner's absence, equivalent to notice to the owner, and evidence of it is admissible in an action for damages caused by a fire starting in that way, inasmuch as said notice may tend to hold the owner to a somewhat stricter measure of diligence: *Hoyt v. Jeffers*, 30 M. 181.

43. Notice of defects in merchandise may properly be given to the agent or broker through whom the sale has been made: *Henkel v. Welsh*, 41 M. 664.

44. In the course of a business conducted in a wife's name but wholly by her husband, notice to him is notice to her: *Leland v. Collier*, 34 M. 419.

45. Where an interpreter is employed in negotiating a sale, the party furnishing such interpreter is bound by the statements made to him, and it need not be shown that such statements were communicated by the interpreter to such party: *Highstone v. Burdette*, 61 M. 54.

46. Where one of several joint vendors is manager of the business and makes all the bargains, he must be presumed to act for all where there is a joint interest and joint duty; and notice to him in proceedings arising out of a breach of warranty caused by the existence of a lien upon the property sold is notice to the rest, unless in cases where the original lien has been extinguished and the existing lien springs from a contract with the buyer: *De Witt v. Prescott*, 51 M. 298.

47. Whatever is done by one member of a partnership in the course of the business is presumed to be known to the others: *Osborn v. Osborn*, 36 M. 48.

48. A firm must be presumed to have had notice of everything of which any partner had notice: *Hubbardston Lumber Co. v. Bates*, 31 M. 158; *Howland v. Davis*, 40 M. 545.

As to when insurer or insured is bound by notice to or knowledge of insurance agent, see INSURANCE, §§ 350-352, 355, 358.

(c) Notice imparted by possession.

49. Where a party purchases land in the possession of a third person, with a knowledge of that fact, he takes it subject to all equities existing between his vendor and the person in possession: *Rood v. Chapin*, W. 79; *Godfroy v. Disbrow*, W. 260; *Norris v. Showerman*, 2 D. 16; *Woodward v. Clark*, 15 M. 104.

50. One who purchases lands in the actual possession of third parties with full knowledge of the possession held and the rights claimed by such parties is in no better position to assert equities against them than his grantor: *Dunks v. Fuller*, 32 M. 242.

51. The purchaser or mortgagee of land that is occupied by some one else than the grantor or mortgager is bound to inquire of the occupant as to the latter's rights, and if he does not is chargeable with notice of them: *McKee v. Wilcox*, 11 M. 353; *Allen v. Cadwell*, 55 M. 8.

52. Actual possession of lands is notice of the title of the party in possession, whatever it may be, and not merely of that which the registry may happen to disclose: *Russell v. Sweezey*, 22 M. 285.

53. Possession of land is notice to a purchaser that the holder has an interest in it even though no deed to him is recorded: *Hommel v. Devinney*, 39 M. 523.

54. Actual possession of real estate is notice, to purchasers or encumbrancers, of the rights of those in possession. It was therefore held in the case of a wife living with her husband on land which they had occupied under a certificate of purchase from the state, but which certificate the husband had assigned without her concurrence to another person who obtained a patent to the land and mortgaged it, that the mortgagee was chargeable with notice of the wife's homestead rights, and could not be regarded as a *bona fide* purchaser: *Allen v. Cadwell*, 55 M. 8.

55. Immediate possession and constant occupancy by one who holds under a land contract operate as full notice of his rights under the contract, so far, at least, as concerns enclosed premises: *Seager v. Cooley*, 44 M. 14.

56. Occupancy of land, when the occupant has a recorded deed to an undivided interest

in it and a contract right to the remaining interest, is such notice of the occupant's rights as will protect the land from the lien of a mortgage of later date than the deeds, except to the extent of the interest remaining in the mortgager: *Weisberger v. Wisner*, 55 M. 246.

57. Where a son took possession of, and continued to occupy, land which his father agreed that he should have by way of advancement from his estate, such possession and occupation were notice to the world of his interest in the property: *Michie v. Ellair*, 54 M. 518.

58. The possession of a tenant is notice to a purchaser of the actual interest the tenant may have in the premises: *Disbrow v. Jones*, H. 48.

59. The continued occupation, cultivation and improvement by a husband of homestead premises after his wife has left him and while she is living apart from him, constitute notice of his claim of ownership to one who acquires title from the wife, although a deed from the husband mediately to the wife is on record: *Stevens v. Castel*, 68 M. 111.

60. The fact that for thirty years a third person has been improving another's land, paying taxes, etc., is enough to put a purchaser on inquiry as to his rights: *Twiss v. George*, 83 M. 253.

61. A purchaser of a portion of some mortgaged premises situated on one of the principal streets of the village where the mortgagee resided, promptly recorded the deed and went into actual possession, improving the premises and living on them. *Held*, that the mortgagee's knowledge of this was enough to put him on inquiry before releasing other parts of the premises from the mortgage lien: *Devey v. Ingersoll*, 42 M. 17.

62. Occupancy of premises by a railroad in course of construction is constructive notice of the company's rights therein: *Detroit & M. R. Co. v. Brown*, 87 M. 533.

63. Possession of land by a grantor is no notice of any rights or equities in him to one who acquires an interest in the land on the faith of his recorded conveyance: *Bloomer v. Henderson*, 8 M. 395.

64. Mere possession after deeding land is not of necessity notice that the grantor still has rights or equities in the premises inconsistent with those conveyed: *Abbott v. Gregory*, 39 M. 68.

65. One remaining in possession of lands which he has conveyed by mortgage will be presumed to hold subject to the title so created; and after foreclosure of the mortgage

his continued possession will not be notice of any other interest or title he may have acquired but which does not appear of record in him: *Dawson v. Danbury Bank*, 15 M. 489.

66. Where the evidence shows that the grantor in an unrecorded deed held possession of the realty thereafter as the grantee's agent, such possession is notice of the grantee's title of which a sheriff who levies on the land as belonging to the grantor is bound to take notice: *Blish v. Collins*, 68 M. 542.

67. The possession and use of land by a firm is not notice to purchasers that the land is partnership assets where the record title shows that the partners are tenants in common owning undivided half interests therein. It is consistent with individual ownership as tenants in common, and will not even put purchasers upon inquiry: *Hammond v. Paxton*, 58 M. 394.

68. Where one who has leased land to a firm buys out the right of one of the partners and afterwards gives a mortgage on the premises, the possession of the new firm is notice to the mortgagee that erections put up by the former firm are not covered by the mortgage, because the other partner's rights cannot be taken away: *Kerr v. Kingsbury*, 39 M. 150.

69. Possession alone is not such *actual notice*, as, under R. S. 1888, p. 260, § 25, would protect the title of one claiming and occupying under an unrecorded deed, against one who subsequently took a mortgage from the grantor without being aware of such possession: *Hubbard v. Smith*, 2 M. 207.

70. Possession and occupancy of land by a grantee is not sufficient notice to subsequent purchasers to answer the purpose of recording the deed, if it is not open, manifest, unequivocal and apparently by virtue of the unrecorded conveyance. So *held* where the grantee was the grantor's husband and continued to live on the premises with her: *Atwood v. Bearss*, 47 M. 72.

71. A purchaser from a party in possession of mortgaged premises is bound by a pending foreclosure suit, if he has notice thereof, to the same extent to which the party is bound: *Baker v. Pierson*, 5 M. 456.

72. An immediate and continuous change of possession of chattels into the hands of a mortgagee is the best possible notice of his rights as against all others: *Pursell v. Thayer*, 39 M. 467.

73. A second mortgagee of personalty in possession of a prior one takes with notice of all the latter's rights: *Grimes v. Rose*, 24 M. 416.

(d) *Notice imparted by recitals in deeds, etc.*

74. Where a second mortgage states that it is given subject to an earlier one, filing is unnecessary to maintain the priority: *Flory v. Comstock*, 61 M. 522.

75. Where a mortgagee in good faith brought a bill for the correction of the description in the original deed of the premises to his mortgager, it was *held* that it did not lie with the original grantor or his heirs, or purchasers from them without consideration, to say that inasmuch as a careful inspection of the record would have disclosed the mistake, the mortgagee did not take his mortgage in good faith. The record could be no better notice to him than the deed itself was to the grantor or grantee, or than the record was to the heirs: *Cummings v. Freer*, 26 M. 128.

76. A. sold land to B., and B. sold it to C., but the former deed was not recorded, and A. sold it again to D., who appears to have had notice of the other conveyances. S., hearing that the land had been abandoned, got an abstract of title which showed the conveyance to C. He immediately took a quitclaim from D., leased the land, and filed a bill to remove the cloud on his title. *Held*, that he had sufficient notice to put him on inquiry, was therefore not a *bona fide* purchaser, and could not maintain his bill: *Stetson v. Cook*, 39 M. 750.

77. One who takes up a mortgage that refers to another has constructive notice of the latter: *Kitchell v. Mudgett*, 37 M. 81.

78. One who purchases property without looking into the title deed of his grantor is chargeable with notice of any defect in the title appearing on the face of such deed: *Wilson v. Arnold*, 5 M. 98.

79. A grantee or mortgagee is chargeable with notice of whatever appears in the chain of title through which he claims: *Mason v. Payne*, W. 459; *Fitzhugh v. Barnard*, 12 M. 104; *King v. Potter*, 18 M. 184; *Case v. Erwin*, 18 M. 434; *Browning v. Howard*, 19 M. 323; *Baker v. Mather*, 25 M. 51; *Dwight v. Tyler*, 49 M. 614; *Wait v. Baldwin*, 60 M. 622; *Plumer v. Johnston*, 63 M. 165; *McKay v. Williams*, 67 M. 547.

80. And with the reasonable inferences therefrom: *Fitzhugh v. Barnard*, 12 M. 104.

81. A deed conveyed land to three partners in the proportion of an undivided half to one and an undivided fourth to each of the others, and added, "this being the proportional undivided interest of each of the above partners in the lumber firm and lands of Milo A. Skin-

ner & Co." The first-named grantee mortgaged his undivided half. *Held*, that the deed did not necessarily import notice of the rights and interests of others in the portion mortgaged: *Van Slyck v. Skinner*, 41 M. 186.

82. A second mortgagee takes subject to a prior unrecorded mortgage expressly referred to in the deed to his mortgager and excepted therefrom: *Baker v. Mather*, 25 M. 51.

83. A mortgage was given in 1832, and was foreclosed in 1835, and the premises conveyed to the mortgagees; but the deed was not recorded in the proper county. The mortgagees soon after transferred the land by deed, which was duly recorded. In 1856 the mortgager made a deed of the same premises, subject to the mortgage, describing it as given "in 1830 or 1831." *Held*, that this was sufficient notice to the grantee, not only of the mortgage, but that it was still unpaid; and after the lapse of twenty-four years he had every reason to believe it had been foreclosed. The grantee, therefore, could not, in good faith, claim anything in opposition to the mortgage and the rights which had accrued under it: *Fitzhugh v. Barnard*, 12 M. 104.

84. Where a purchaser cannot make out a title but by a deed which leads him to another fact, he is presumed to have knowledge of that fact: *Norris v. Hill*, 1 M. 202.

85. Notice of a part of an agreement under which a lessee holds and occupies must be deemed notice of the whole of it to his assignee: *Norris v. Showerman*, 2 D. 16.

(e) *Lis pendens.*

86. *Lis pendens* may be filed as soon as the bill is filed in the suit: *Gordon v. Tyler*, 53 M. 629.

87. A *lis pendens* need not be filed to bind one who has actual notice. It is required, in the absence of actual notice, to charge a party with constructive notice: *Baker v. Pierson*, 5 M. 456.

88. The purpose of a notice *lis pendens* is to prevent defendant from so alienating the property in dispute as to affect complainant's rights and to bind it wherever it may be when decree is entered: *Hammond v. Paxton*, 53 M. 398.

89. The object of the notice *lis pendens* in chancery proceedings against real estate is to enable persons interested to ascertain from it the persons and property affected by the bill, together with the general nature of the matters in controversy. But they are left to examine the court record for details and particulars, and are bound by what appears in the

bill and proceedings thereon: *Alterauge v. Christiansen*, 48 M. 60.

90. A notice of *lis pendens* for partition sufficiently states its object if it states that it is "for the purpose of partitioning and setting apart, either by division or by sale, and a division of the proceeds among the complainant and defendants, of the hereinafter described lands and premises according to their respective titles and interests therein; the complainant's interest being now claimed as an undivided fifth part thereof:" *Ibid*.

91. The operation of a *lis pendens* as notice lasts, if the suit is not abandoned, until it is closed by final decree, provided it is prosecuted with reasonable diligence and in good faith; otherwise a purchaser who has no actual notice is not affected by it: *Hammond v. Paxton*, 58 M. 393.

92. A notice *lis pendens* is ineffective as against a mortgagee whose mortgage antedated the notice though it was not recorded until after the notice was filed: *Ibid*.

93. A notice *lis pendens* affects those only who afterwards and pending suit seek to obtain interests, as purchasers or encumbrancers, in the property it refers to; and one who has begun suit to establish an equitable lien thereon upon the basis of previous dealings with defendant does not himself become thereby a purchaser or encumbrancer within the protection of the recording laws as against any rights acquired before the notice is filed: *Ibid*.

94. A suit and cross-suit constitute one cause, and notice of the suit is notice of the cross-bill also. So held in the case of a *lis pendens* filed in an original foreclosure suit, but not in a cross-suit for foreclosure; it was constructive notice to all the defendants: *Hall Lumber Co. v. Gustin*, 54 M. 624.

95. Filing a notice *lis pendens* in a suit to correct a deed is notice to the world that defendant is liable to be divested of any title claimed by him; and any subsequent purchaser of a mortgage given by defendant takes it with constructive notice of that fact, even though he never knew of the *lis pendens* or though it had without his fault been lost from the files and not been entered on the file-book: *Heim v. Ellis*, 49 M. 241.

96. A suit is abandoned if before its completion another seeking the same relief is instituted and carried to decree in its place; and the effect of a *lis pendens* filed on the institution of the first suit is not transferred to the other: *Hammond v. Paxton*, 58 M. 394.

97. Where the notice of pendency of an attachment suit, in addition to what was re-

quired by statute, erroneously stated that the writ was returnable in November *next*, instead of November *instant*, it was held that the mistake did not vitiate the proceedings: *Drew v. Dequindre*, 2 D. 93.

98. The chief purpose of the notice *lis pendens* required by statute in mechanics' lien cases is to bind subsequent interests, and such notice seems unnecessary as against the original parties to the bill: *Sheridan v. Cameron*, 65 M. 680.

(f) *Notice to the grantees of a bona fide purchaser.*

99. Although a party may not himself be a *bona fide* purchaser without notice, yet if his grantor was such a purchaser, the former is entitled to all his rights, and to the protection which the law would give him: *Godfroy v. Disbrow*, W. 260.

100. A defendant's title, resting on priority of record of a second deed, will prevail against that of a plaintiff who claims through a prior unrecorded deed from the same original grantor, if any one of the subsequent mesne purchasers through whom such defendant derives title purchased in good faith and for a valuable consideration, without notice of said prior unrecorded deed (H. S. § 5683): *Shotwell v. Harrison*, 23 M. 410.

II. EFFECT OF NOTICE.

As to effect of recording as notice, see RECORDING ACTS, III.

Effect of notice on subsequent mortgagee's part as dispensing with reffiling, see CHATTEL MORTGAGES, § 111.

101. Notice of a prior mortgage puts a subsequent purchaser upon inquiry as to its extent, and he takes subject to its amount: *Doyle v. Stevens*, 4 M. 87.

102. Whether an unrecorded deed would be void where the subsequent deed was a mere quitclaim of such interest as remained in the grantor, and followed sundry mesne conveyances to persons who were affected by notice of the first grantee's equities, *quere*. A judgment in ejectment to the contrary was left undisturbed by a divided court: *De Veaux v. Foubender*, 57 M. 579.

103. A person cannot be an innocent purchaser of land which his grantor informs him has already been conveyed by him to another person: *Oliver v. Sanborn*, 60 M. 346.

104. A subsequent purchaser who has notice, actual or legal, of a prior conveyance, is not protected, unless the grantee in such con-

veyance, or person to be benefited by the charge, was a *particeps criminis* in the fraud: *Fox v. Willis*, 1 M. 321.

105. One who takes a deed from heirs of a deceased person with notice of a claim under a prior unrecorded deed from the ancestor of his grantors to another, cannot, by having his deed recorded first, acquire any priority over those claiming under the earlier deed; his failure to find the prior deed disclosed in the registry would give him no right to suppose the claim of which he had notice to be unfounded: *Munroe v. Eastman*, 31 M. 283.

106. If one who has contracted to sell land conveys to a third person, such person, if aware of the contract, takes the property subject to the same equities to which it was subject in the grantor's hands: *Hogsett v. Ellis*, 17 M. 351.

107. A bill in equity to establish rights in land should be dismissed as to a *bona fide* purchaser of a portion of it who had no notice of complainant's equities; but if his grantor is charged with notice, the land retained by such grantor may properly be charged with the whole amount of complainant's lien: *Holcomb v. Mosher*, 50 M. 252.

108. A sale of standing timber being one of an interest in real estate, a subsequent purchaser by warranty deed of the land with notice thereof cannot sue the vendee of timber for removing it: *Russell v. Myers*, 32 M. 522.

109. Notice by the grantee of land to his grantor to remove timber which the grantee knows has been previously sold to another, is not binding on the purchaser of the timber: *Wood v. Elliott*, 51 M. 320.

III. PURCHASERS WITHOUT NOTICE.

(a) *In general.*

110. One who buys property knowing that the vendor holds it in trust for the purpose of raising money on it for the true owner's use, and who gives in consideration for it a note by the true owner and his own due-bill, is not a *bona fide* purchaser without notice: *Storrs v. Wallace*, 61 M. 437.

111. One who takes by quitclaim deed is not a *bona fide* purchaser: *Dickerson v. Colgrove*, 100 U. S. 578; *Baker v. Humphrey*, 101 U. S. 494.

112. Purchasers at public judicial sales or under a quitclaim deed usually buy at their own risk of the regularity of title: *McGoren v. Avery*, 37 M. 120.

113. Innocent purchasers under a forged deed are in no better position as to title than

if they had purchased with notice: *Crawford v. Hoeft*, 58 M. 1.

114. Good faith does not give one who holds under a forged deed or mortgage any rights against the person whose name has been forged, or his heirs: *Austin v. Dean*, 40 M. 386; *Camp v. Carpenter*, 52 M. 375; *McGinn v. Tobey*, 62 M. 252.

115. One who purchases from one who holds by a record title that is bad on its face for fraud cannot claim to be a *bona fide* purchaser without notice of the invalidity of his grantor's title: *McKay v. Williams*, 67 M. 574 (Nov. 10, '87).

116. Where purchasers of land, the record title of which is free from any indication of a valid outstanding claim in any one, hold a good legal title combined with the full equities of *bona fide* purchasers without notice, they cannot be disturbed in their right without superior equities, and there are no equities superior to those of such purchasers: *Loomis v. Brush*, 36 M. 40.

117. Pending a chancery suit in which no *lis pendens* had been filed, affecting lands to which the defendant had the complete legal title of record, such defendant executed a mortgage to a third person to secure a *bona fide* debt, and then made a settlement of the suit. Held, that the mortgagee had a right to rely upon the record title, and was not bound by the settlement: *Jackson, L. & S. R. Co. v. Davison*, 65 M. 416.

That an assignee for creditors is not a *bona fide* purchaser for a valuable consideration, see ASSIGNMENT, § 189.

As to who are to be deemed subsequent purchasers without notice and for valuable consideration so as to be protected against unrecorded instruments, see RECORDING ACTS, IV.

(b) *Burden of proof as to notice.*

118. The burden of proving notice, either actual or constructive, is on the party alleging it: *Larzelere v. Starkweather*, 38 M. 96.

119. Purchasers of land which has been fraudulently transferred to their grantor must establish the good faith of their purchase, and it cannot be presumed: *Letson v. Reed*, 45 M. 27.

120. Notice to a purchaser from an agent to sell lands, of the agent's fraud in obtaining a deed to himself from his principal, cannot be presumed without proof: *Moore v. Mandlebaum*, 8 M. 433.

121. Under the recording law of June 9, 1819, it was necessary for a party who would avoid the effect of a subsequent conveyance

first recorded to show that the grantee in such conveyance had notice of the prior conveyance when he took his deed, or that he had not paid a valuable consideration: *Godfroy v. Disbrow*, W. 280.

122. The good faith of a purchase of land need only be shown by the purchaser by proof of the record, on which he had a right to rely if he had no notice of the prior deed from any other source: *Shotwell v. Harrison*, 23 M. 410.

123. Notice on purchaser's part of a prior unrecorded deed is an affirmative fact to be proved by the party claiming under such deed: *Ibid.*

124. In a suit to correct and foreclose a mortgage, the burden of proof is on complainant to show that a subsequent purchaser had notice of complainant's unrecorded lien: *Hanold v. Kays*, 64 M. 439.

125. Where an execution purchaser of land has recorded the certificate of sale in advance of any conveyance from the debtor to other persons, he is presumed, until the contrary appears, to be entitled to recover in an action of ejectment against the latter, who have the burden of proving themselves to be or to derive title from *bona fide* purchasers: *Atwood v. Bearss*, 45 M. 469.

Further as to burden of proof where a party claims to be a *bona fide* purchaser without notice and for a valuable consideration, see RECORDING ACTS, IV, (b), (c).

NUISANCE.

I. IN GENERAL; WHAT CONSTITUTES.

- (a) *Public nuisances.*
- (b) *Private nuisances.*

II. ABATEMENT.

- (a) *In general.*
- (b) *By injunction.*

III. ACTIONS FOR NUISANCE.

I. IN GENERAL; WHAT CONSTITUTES.

(a) *Public nuisances.*

1. Nothing can be a nuisance which the sovereign authority allows, especially when the allowance is on public grounds, and made to facilitate the use of that which is common to all: *Attorney-General v. Evart Booming Co.*, 34 M. 462.

2. That which is permitted by competent authority is not a nuisance: *Grand Rapids & I. R. Co. v. Heisel*, 38 M. 62.

3. What the state authorizes it cannot prosecute as a nuisance: *Chope v. Detroit & H. P. R. Co.*, 37 M. 195.

4. Permission from a municipal council to make a basement staircase opening in a sidewalk would of itself rebut any presumption that such an opening was a nuisance: *Everett v. Marquette*, 53 M. 450.

5. A public nuisance must be something that subjects the public to inconvenience or annoyance: *People v. Carpenter*, 1 M. 278; *Clark v. Lake St. Clair Ice Co.*, 24 M. 508; *Attorney-General v. Evart Booming Co.*, 34 M. 462.

6. Processions in city streets for political, religious, social or other demonstrations, by day or reasonable hours at night, are not necessarily nuisances, and regulation, not prohibition, unless under clear authority of the charter, is the extent of a city's power: *Frazee's Case*, 63 M. 396.

7. An unauthorized obstruction across a public street is a public nuisance: *Pontiac & L. P. R. Co. v. Hilton*, 69 M. 115.

8. The obstruction of a mere *cul de sac* in the interior of a city block which led into alleys that extended to public streets was held not to be a public wrong such as might be redressed by public prosecution: *People v. Jackson*, 7 M. 432; *Tillman v. People*, 12 M. 401.

9. Every encroachment on a way is not necessarily a nuisance: *People v. Carpenter*, 1 M. 278; *Clark v. Lake St. Clair, etc. Ice Co.*, 24 M. 508.

10. A purpresture — whereby is meant an enclosure by a private person of a part of that which belongs to the public and which ought to be open and free to the enjoyment of the public — is not necessarily a public nuisance, for it may exist without inconveniencing the public: *Attorney-General v. Evart Booming Co.*, 34 M. 462.

11. A flight of stairs, fifteen feet high and three feet eight inches wide, was erected within the limits of Woodward avenue, in the city of Detroit, leading from the ground to the second story of a building standing on the line of the street adjacent to the stairs. Held, that though this was an obstruction not authorized by the acts of the governor and judges, or by the ordinances of the city, yet whether it was an annoyance to the public so as to constitute a nuisance was for the jury to decide: *People v. Carpenter*, 1 M. 278.

12. The extension of city boundaries to take in toll-gates does not make them a public nuisance: *Chope v. Detroit & H. P. R. Co.*, 37 M. 195.

13. A roof built twelve or fifteen feet above an alley is not necessarily an obstruction, nor is anything that does not interfere with its accustomed use: *Beecher v. People*, 38 M. 289.

14. A platform built in a public alley at the rear of a store for convenience in transferring goods is not necessarily a nuisance: *Bagley v. People*, 48 M. 855.

15. A wooden awning over a sidewalk in front of a store is not *per se* a public nuisance: *Hawkins v. Sanders*, 45 M. 491.

16. Nor is a tree in the highway: *Clark v. Dasso*, 84 M. 86.

17. Steam-engines as a means of locomotion in public highways are not necessarily a nuisance: *Macomber v. Nichols*, 34 M. 212.

18. A bridge over a navigable stream is not necessarily a nuisance; it may or may not be such according to circumstances; and the vessel-owner who brings suit for an injury occasioned by it must show the circumstances that make the injury fairly chargeable to some one as a wrong: *Ibid.*

19. Coasting on a public street is not necessarily a nuisance, and the licensing of such a use of a city street is within the discretion of the common council, which discretion the courts will not review: *Burford v. Grand Rapids*, 53 M. 98.

20. Where one creates in a public street obstructions which in the first instance are lawfully there, but which he is bound to remove as speedily as possible, they become unlawful from the beginning if he does not remove them in a reasonable time; and what is such time is for the court to determine where the facts do not conflict or are conceded: *Bowen v. Detroit City R. Co.*, 54 M. 496.

21. Excavations, properly and safely constructed under the public streets in cities for the convenience of the owners of the premises adjoining are not unlawful; and they are not liable to be treated as nuisances if kept in repair, and the use of the street is not interrupted for an unreasonable length of time: *Fisher v. Thirkell*, 21 M. 1.

22. A person lawfully using a water-course cannot be guilty of a public nuisance, unless that nuisance is the consequence of his own conduct; and a mere change in the mode of enjoyment, which involves no increase of evil, cannot be injurious. So, a mill-dam is not a nuisance where the stream without it would produce the same extent and kind of mischief: *Beach v. People*, 11 M. 106.

23. Polluting the waters of an ancient stream, thus rendering them unfit to drink, is not a public nuisance unless the stream is one where the public has rights: *Messersmidt v. People*, 46 M. 437.

24. The erection of a wooden building within the limits of a city or village is not *per*

se a nuisance, even though prohibited by ordinance: *St. Johns v. McFarlan*, 33 M. 72.

25. A house of ill-fame is a public nuisance, and, therefore, indictable: *Welch v. Stowell*, 2 D. 332; *Slaughter v. People*, 2 D. 334.

26. Declaring a thing to be a nuisance does not make it such, if not such in fact; and an officer removing as such that which is innocent cannot be justified: *Horn v. People*, 26 M. 221.

27. The question of nuisance or no nuisance is one depending on the particular facts: *People v. Carpenter*, 1 M. 273; *Crippen v. People*, 8 M. 117; *Clark v. Lake St. Clair, etc. Ice Co.*, 24 M. 508; *The City of Erie v. Canfield*, 27 M. 479.

(b) *Private nuisances.*

28. The erection and use by defendant of a high platform on his own premises overlooking another's base ball ground to which an admission fee is charged will not be restrained as a nuisance: *Detroit Base Ball Club v. Depert*, 61 M. 68.

29. Courts cannot limit the distance up or down to which a man may enjoy his property, and if one builds higher than his neighbor he subjects himself to no liability unless he interferes with the rights of others: *Ibid.*

30. Whether a fence erected maliciously and with the sole purpose of shutting out the light and air from a neighbor's windows can be enjoined as a nuisance, *quere*; the court being equally divided: *Burke v. Smith*, 69 M. — (April 20, '88).

31. One who has taken up his residence in a portion of the city mainly appropriated to business purposes cannot complain of the establishment, or obtain an injunction to restrain the carrying on of any new business near him, provided it is not in itself objectionable as compared with those already established, and is carried on in a proper manner: *Gilbert v. Showerman*, 23 M. 448.

32. The business of forging was conducted on a large scale in cheap wooden buildings in the neighborhood of costly residences. The residents were injured in their persons and property by the smoke and soot from the forge; their houses were jarred by the concussion of the heavy steam-hammers, which disturbed the peace and affected the health of the neighborhood, and in some instances damaged the foundations of the houses. Held to be a clear case for relief by injunction against a nuisance: *Robinson v. Baugh*, 31 M. 290.

33. However lawful a business may be in

itself and however suitable the location, it cannot be carried on so as to directly damage the property of others, in the absence, at least, of anything conferring any prescriptive right; yet a resident of a trading or manufacturing neighborhood must submit to such ordinary personal annoyances and discomforts as are fairly incidental to legitimate trading and manufacturing carried on in a reasonable way: *Ibid.*

34. Where a nuisance is caused by the mode of conducting a business, it is no defence to a bill filed to enjoin it that some of the complainants have establishments in the same vicinity to which similar objections lie: *Ibid.*

35. Complainants in a bill to enjoin a nuisance caused by one's mode of carrying on the forging business were held not estopped by acquiescence where the grievance complained of existed only about two years, and that which gave greatest offence only about one year, before the bill was filed, and complaints of the injurious character of the business were made to the common council some months previously, and to the defendant himself at an early day: *Ibid.*

36. The location of a burying ground by a township board of health in the neighborhood of complainant's well held not to be a private nuisance: *Upjohn v. Richland Board of Health*, 46 M. 542.

37. It is an irreparable injury to create intolerable smells near the homestead of a neighbor, or undermine his house by excavations, or cut him off from the street by buildings or ditches, or otherwise destroy the comfortable, peaceful and quiet occupation of his homestead; also to break up his business, destroy its good-will, and inflict damages that cannot be measured because the elements of reasonable certainty are wanting in computing them. A nuisance may threaten irreparable injury even to unoccupied land where it is devoted to some special use or where the person causing the nuisance is irresponsible: *Edwards v. Allouez Mining Co.*, 38 M. 46.

38. A dam which overflows land and injures water privileges is a nuisance which the owner of the overflowed land and of the water privileges has a right to abate by tearing it down: *Winchell v. Clark*, 68 M. 64.

II. ABATEMENT.

(a) *In general.*

39. A public nuisance cannot be lawfully abated by a private person not directly injured or individually annoyed by it, and if in a public highway he can only interfere with

it as far as is necessary to exercise his right of passing along the highway, and then without wanton violence: *Clark v. Lake St. Clair, etc. Ice Co.*, 24 M. 508.

40. An unauthorized obstruction across a public street may be abated by any citizen desiring to travel along the street if he can do so without a breach of the peace: *Pontiac & L. P. R. Co. v. Hilton*, 69 M. 115.

41. A city council authorized to compel the owners and occupants of slaughter-houses, etc., to cleanse and abate whenever necessary for the health, etc., of the inhabitants of the city, can exercise such power only in abating legal nuisances, and cannot interfere with what is not a nuisance in fact: *Wreford v. People*, 14 M. 41.

42. Where the charter only allows the city council to prevent future erections and locations of such establishments as slaughter-houses, the council has no right to put an end to any existing business of the kind, so long as it is not a nuisance in fact: *Ibid.* See *supra*, § 6.

43. The power to abate a nuisance is limited to the removal of that in which the nuisance consists: *Welch v. Stowell*, 2 D. 332.

44. Neither individuals nor the common council of a city have a right to abate the nuisance occasioned by the occupation of a building as a house of ill-fame, by demolishing the building. The nuisance is not the building itself but the use to which it is put: *Ibid.*

45. Where the alleged nuisance arises from the use of things innocent in themselves, the case does not call for their destruction in order to effect an abatement: *Messersmidt v. People*, 46 M. 487.

46. The court on an indictment and conviction for a public nuisance is not obliged to order a removal of the nuisance: *Crippen v. People*, 8 M. 117.

47. Property can be destroyed for the abatement of a nuisance — as here, a mill-dam — only so far as is determined to be necessary therefor. And the fact that property is decreed to be a nuisance does not oblige the court to order its destruction: *Shepard v. People*, 40 M. 487.

48. Before any judgment of abatement is given there should be a finding of a present state of things, showing not only the appropriateness but the necessity of such a judgment: *Messersmidt v. People*, 46 M. 487.

(b) *By injunction.*

49. The statutory provision (H. S. § 7965) as to the jurisdiction of chancery in cases of nuisance was not intended to extend or en-

large that jurisdiction: *Norris v. Hill*, 1 M. 202.

50. Nuisances may be stayed or prevented by injunction, and the complainant will not be first required to establish his right at law, unless doubtful and in dispute: *White v. Forbes*, W. 112.

51. In cases of nuisance, H. S. § 7965 confers jurisdiction in equity where there is not a plain, adequate and complete remedy at law, and gives power to grant injunctions to stay or prevent the nuisance, but it is not essential that a trial at law should precede the filing of the injunction bill. If the court of equity deems a finding by jury needful, it may, in its discretion, direct one, but it is not bound to do so: *Robinson v. Baugh*, 31 M. 290.

52. A bill in equity will lie against complainant's neighbor for building and maintaining a cornice that projects over complainant's boundary line to the permanent injury and depreciation of his property. And this is so though a remedy be given by statute for the abatement of a private nuisance where the party complaining thereof has recovered therefor in an action on the case: *Wilmarth v. Woodcock*, 58 M. 482.

53. A bill in equity was filed to compel the removal of an unsightly cornice which defendant had built upon his house so as to project into plaintiff's lot. At the time defendant bought his lot plaintiff's fence was on the line asserted by the bill, and it was pointed out to defendant as the line claimed to be the true boundary. *Held*, that the bill would lie: *Wilmarth v. Woodcock*, 66 M. 331.

54. Ownership of a homestead locally affected by a nuisance injurious to health is such a special interest as will give one a right to complain of the nuisance as a special grievance to him, and to obtain equitable interference: *Treat v. Bates*, 27 M. 390.

55. The allegation in a bill to abate the private nuisance of an encroachment on complainant's premises, that defendant has claimed ownership of a strip thereof, is not such a statement of a dispute about a boundary as would deprive the court of jurisdiction, if the bill states with certainty the actual boundary and complainant's ownership on one side: *Wilmarth v. Woodcock*, 58 M. 482.

56. A suit was brought in equity to enjoin, as a nuisance dangerous to health, a dam that had existed for forty years on property of defendant, who also owned the land covered by the mill-pond. There was no showing how long the complainants had held the lands claimed to be affected, except the allegation that they had held the same for several years prior to

the filing of the bill. *Held*, that as complainants had probably bought when the dam was in existence, and knowing its features and influences, they were not entitled to the same equitable considerations that would prevail had defendant created the alleged nuisance after they had acquired and settled upon their respective premises, and that they should seek their remedy at law where defendant could have a jury trial: *Ronayne v. Loranger*, 66 M. 373.

57. The attorney-general has no authority, unless in extraordinary cases, to proceed at his own instance, as relator for the state, to sue a private person by information in chancery to abate a mill-dam on the ground of its being hurtful to health; such a case should be prosecuted, if at all, by the public, and submitted to a jury: *Attorney-General v. Hane*, 50 M. 447.

58. Nor can the attorney-general proceed by information in equity to restrain and abate the appropriation by a booming company of part of the bed of a small stream not navigable except for floating logs; such an appropriation is neither a purpresture nor a public nuisance: *Attorney-General v. Ewart Booming Co.*, 34 M. 462.

59. The fact that similar nuisances are maintained in the same vicinity by others who have not been prosecuted is no reason for declining to stop one maintained by defendant; nuisances separately maintained must be proceeded against separately, and it is of no legal moment which is taken first, or that the prosecution is carried on against only one at a time: *Robinson v. Baugh*, 31 M. 290.

60. A perpetual injunction was granted to prevent the erection of a dam which would have flooded the lands of complainant, on the grounds of injury to the property and the probability that disease would be generated by the overflowing of the water: *White v. Forbes*, W. 112.

61. Where the partial abatement of a dam would prevent the overflow of the land of one who complained of it as a nuisance, but its entire abatement was necessary to abate a public nuisance affecting his homestead, a decree for such complete abatement was affirmed: *Treat v. Bates*, 27 M. 390.

62. A wooden building encroached six inches on a private alley for more than twenty years. The owner attempted to veneer it with brick, whereby it would encroach three inches more. It did not appear that the encroachment would materially injure the right of way. *Held*, that the adjacent owner was

not entitled to remedy by injunction: *Hall v. Rood*, 40 M. 46.

63. Equity will not require the walls of a building to be torn down because of an encroachment of four and a half inches upon the street; relief must not be disproportionate to the injury: *Big Rapids v. Comstock*, 65 M. 78.

III. ACTIONS FOR NUISANCE.

64. Any one who upholds and sustains a private nuisance, to another's injury, is answerable for the injury done: *Caldwell v. Gale*, 11 M. 77.

65. One is not liable for an injury occasioned by a nuisance on premises in his possession, unless his possession gives him the legal control of the premises: *Fisher v. Thirkell*, 21 M. 1.

As to whether landlord or tenant is liable for nuisance, see LANDLORD AND TENANT, §§ 73-76.

66. A city is not liable for a nuisance brought within a street by widening it: *McCutcheon v. Homer*, 43 M. 483.

67. An individual can sue for the special injury resulting to himself from defendant's neglect to perform a public duty; so held of an action against a railway company for the personal damage caused by leaving its cars standing across a highway for a longer time than is allowed by statute: *Patterson v. Detroit, L. & N. R. Co.*, 56 M. 172.

68. One cannot sue another for damages from a nuisance which both have united in committing: *McGinnis v. Carrier*, 39 M. 111.

That one cannot recover for a nuisance if his own unlawful conduct has contributed thereto, see DAMAGES, §§ 184, 185.

69. The question discussed whether, where one erects a dam on his own land, which causes the land of another to be flowed, and then conveys the land on which the dam is situated, a suit can be brought against his grantee for the nuisance before he has been served with notice of it, and requested to remove it: *Caldwell v. Gale*, 11 M. 77.

70. If such notice be necessary, and has once been given by the owner of the land flowed, it will inure for the benefit of his grantee, or of any one claiming title through or under him: *Ibid*.

71. Where a notice from plaintiff's grantor was sufficient to entitle him to maintain the action, and such notice was proved, and the court erroneously charged that the notice must be given by the plaintiff or by some one authorized by him, it was held that to entitle

the plaintiff to take advantage of the erroneous ruling it was not necessary that the attention of the court should be specially called to the evidence of notice at the time of the charge: *Ibid*.

72. In an action by an individual for a public nuisance, recovery can be had only for such damage as was peculiar to plaintiff, and as was the natural and proximate consequence of the nuisance: *Powers v. Irish*, 23 M. 429.

OFFICERS.

I. WHAT IS AN OFFICE AND WHO ARE OFFICERS.

II. ELIGIBILITY; SELECTION; APPOINTMENT; REMOVAL; FILLING VACANCIES.

III. TENURE; RESIGNATION.

IV. PROOF OF OFFICIAL CHARACTER; OFFICERS DE FACTO.

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As to officers of BANKS and private CORPORATIONS, see those titles.

As to highway officers, see HIGHWAYS, VIII.

As to school-district officers, see SCHOOLS, III.

As to town officers, see TOWNSHIPS, VII.

Mandamus to officers and boards, see *MANDAMUS*.

Venue of actions against officers, see ACTIONS, §§ 39, 40.

Prosecutions for not performing duties, see CRIMES, §§ 581-584.

Offences of resisting and impersonating officer, see CRIMES, §§ 475-478, 480.

I. WHAT IS AN OFFICE AND WHO ARE OFFICERS.

1. An office is a special trust or charge created by competent authority. If not merely honorary, certain duties will be attached to it, the performance of which will be the consideration for its being conferred upon the particular individual who for the time being will be the officer: *Throop v. Langdon*, 40 M. 673.

2. While a private person may have a valuable interest in an office, office is in this state a public trust in which the public interest is paramount: *Frey v. Michie*, 68 M. 323 (Jan. 26, '88).

3. The term "officer," in Const., art. 18, § 1, applies to the occupant of an office that has some permanence, and is not created by a temporary nomination for a transient purpose: *Underwood v. McDuffee*, 15 M. 361; *Shurbun v. Hooper*, 40 M. 504.

4. An officer is distinguished from an employee in the greater importance, dignity and independence of his position; in being required to take an official oath, and perhaps to give an official bond; in the liability to account for misfeasance or non-feasance, and usually, though not necessarily, in the tenure of his position: *Throop v. Langdon*, 40 M. 673.

5. But the fact that an oath of office has been taken does not prove that the person taking it is an officer rather than a clerk; nor does the fact that one is independent of his superior officer in the tenure of his position make him an officer also: *Ibid.*

6. The title "clerk" is properly that of an employee; and the chief clerk in the office of the assessor of the city of Detroit is not an officer, though the tenure of his position is independent of the assessor: *Ibid.*

7. The superintendent of fisheries is not an officer within the meaning of the constitution and laws of the state, but is an employee of the state board of fish commissioners and is removable at their pleasure: *Portman v. Fish Commissioners*, 50 M. 258.

8. Referees of causes in the circuit court are not officers required to take the constitutional oath: *Underwood v. McDuffee*, 15 M. 361.

That constitutional character of office must remain unchanged, see CONSTITUTIONS, §§ 709-711.

II. ELIGIBILITY; SELECTION; APPOINTMENT; REMOVAL; FILLING VACANCIES.

See CITIES AND VILLAGES, V, (a); SCHOOLS, III, (a), (b).

9. Residence within the circuit is not a condition to eligibility to, or tenure of, the office

of circuit judge, unless a judge actually residing within his circuit removes from it, in which case he vacates his office: *Royce v. Goodwin*, 22 M. 496.

See CONSTITUTIONS, § 648.

10. No one who is not a duly qualified attorney is eligible to the office of prosecuting attorney: *People v. May*, 3 M. 598.

11. Particular political opinions cannot be made a condition to holding office: *Attorney-General v. Detroit*, 58 M. 218.

As to the constitutional prohibition against tests, see CONSTITUTIONS, §§ 706-708.

12. An express requirement of the constitution as to the mode of choice of officers not only precludes every other mode, but must be taken as a circumstance bearing upon the identity of the office: *McClintock v. Laing*, 19 M. 300.

13. All officers and functionaries exercising powers of government and control over political action must derive their powers and office either from the people directly or from the agents or representatives of the people: *Attorney-General v. Detroit*, 58 M. 213.

14. No public office can be obtained or exercised without either election or appointment: *Ames v. Port Huron, etc. Co.*, 11 M. 139; *Abels v. Ingham Supervisors*, 42 M. 526.

As to the requirement that judicial officers must be elected by the people, see CONSTITUTIONS, §§ 634-641, 643, 645.

As to method of voting, ballots, canvassing returns, etc., see ELECTIONS.

As to determination of title to office, see QUO WARRANTO.

That the legal title to office cannot be tried on MANDAMUS, see that title, § 24.

15. The power of appointment to office is a franchise: *Frey v. Michie*, 68 M. 323.

16. A purpose to make an appointment which has never been carried out cannot sustain official action by the person intended: *Bench v. Otis*, 25 M. 29.

17. In an action brought by one who has purchased of an agent, appointed by the commissioner of the land office, timber which had been taken by a trespasser from state lands, neither the trespasser nor one claiming under him can dispute the validity of the agent's appointment: *Ballou v. O'Brien*, 20 M. 304.

18. Where a board is empowered to appoint certain officers whose action it is its duty to supervise, it cannot appoint such officers from its own membership, and it seems that a resignation from the board, subsequent to such appointment, would not enable the member to act as such officer: *Kinyon v. Duchene*, 21 M. 496.

19. The several counties composing a judicial circuit should act affirmatively, through their respective boards of supervisors, as a basis for the appointment of a stenographer for the circuit; otherwise the law authorizing such appointments is not operative in every part of it. But, in the absence of evidence to the contrary, such action may be fairly presumed where a stenographer's commission has been issued: *Goodale v. Marquette Supervisors*, 45 M. 47.

20. It seems that the Wayne county auditors have the power of appointing county superintendents of the poor: *Frey v. Michie*, 68 M. 323 (Jan. 26, '88); *Vrooman v. Michie*, 69 M. 42.

21. The power of appointing county superintendents of the poor having been expressly vested in the Wayne county auditors before the constitution of 1850, and never taken away by statute, and it not being among the constitutional powers of the board of supervisors, the supreme court is not disposed to interfere with the long practical construction of such power, which is sufficient to render the auditors' appointees officers *de facto* at least: *Ibid.*

22. An officer cannot be removed from his office by the body possessing power for that purpose, without an intent on their part to remove him. And where the duration of his term is fixed by statute, and the body possessing the power of removal and appointment makes a new appointment on the mistaken idea that a vacancy exists, such appointment does not have the effect to remove the incumbent: *Stadler v. Detroit*, 13 M. 846.

23. Power to authorize removal for a cause to be defined by law does not allow removals at discretion and without cause: *People v. Lord*, 9 M. 227.

24. Removals at will are not in accordance with the policy of the state: *Mead v. Ingham County Treasurer*, 36 M. 416.

25. In a proceeding to remove a person from a public office, the trial and judgment of removal must relate to the same office specified in the charge or complaint: *Hall v. People*, 21 M. 456.

26. The governor's power of removal under Const., art. 12, § 8, can only be exercised for the specific causes mentioned in the constitution, and upon charges which shall specify the particular acts or neglect relied on to make out the cause alleged; and the respondent must have notice of these charges and specific allegations, and reasonable notice of a time and place when and where he will have an oppor-

tunity for a hearing thereon, upon which he may produce proofs. And the governor has judicial power to examine into and pass upon these charges: *Dullam v. Willson*, 58 M. 392.

27. H. S. § 651, permitting the governor to remove any state or county officer except the state treasurer and judges, held void, because at the time it was adopted the governor had no judicial power under the constitution: *Ibid.*

28. Act 165 of 1877 (H. S. § 483, subd. 17) permits a board of supervisors to remove an officer appointed by it on charges preferred to the board, or its chairman, and after notice of the hearing and a copy of the charges has been delivered to the officer, and full opportunity has been given him to be heard in his defence. Held, that as to time and notice of hearing the board does not act as an ordinary court, but as a public board authorized to use its own time and methods, subject only to the condition that no one shall be removed without charges and reasonable notice, nor without a full opportunity to be heard; and a service on August 7th of a copy of charges and notice of meeting to be held August 18th to investigate them, was held sufficient, though made on the authority of two supervisors without a meeting of the board: *Gager v. Chippewa Supervisors*, 47 M. 167.

29. Prior to act 165 of 1877 (see H. S. § 483, subd. 17) the board of supervisors had no general power to remove county officers. H. S. § 483, subd. 14, gives the power only for the two causes named — failure to report and neglect to give bond; and not a discretionary power to remove: *Mead v. Ingham County Treasurer*, 36 M. 416.

30. Supervisors having acted without authority in making the appointment of new officers to fill a supposed vacancy caused by their removal of existing officers, their immediate recognition of the appointment as one to be respected cannot be regarded as of any importance; they merely attributed validity to their own invalid act: *Ibid.*

31. One of three superintendents of the poor having been a party to a controversy out of which grew the attempted removal of the other two by the supervisors, and the appointment of others in their places, his recognition of the new appointees as his colleague or co-superintendents would be of little force to make out that they were officers *de facto*: *Ibid.*

32. To justify a removal from office, the records of the board of supervisors must show all the facts to warrant it. In the case of the

removal of a county treasurer for neglecting to give further bonds, the records should show some finding or resolution of the board that the existing bond was insufficient, the requirement of a new bond, notification to the treasurer of that fact, failure on his part to comply, and subsequent proceedings for his removal, of which he should have notice and an opportunity to make defence: *McGregor v. Gladwin Supervisors*, 37 M. 388.

33. It is misfeasance, warranting removal from office, for superintendents of the poor to draw orders on the county treasurer in favor of persons without whose knowledge they themselves draw the money, and compel the payees to take from themselves at exorbitant prices such goods as they see fit to give them; or to use their official power and the poor fund to coerce the recipients of their favor to vote under their dictation; or not to refund to the treasurer money which has been repaid to them by persons to whom they have afforded temporary relief: *Gager v. Chippewa Supervisors*, 47 M. 167.

34. Vacancies in the office of judge of probate are to be filled by the governor's appointment (Const., art. 6, § 14). A circuit court commissioner was authorized by R. S. 1846 (ch. 91, § 16) to act as judge of probate while the vacancy lasted. *Held*, that the statute did not conflict with the constitution, and that it applied also to cases in which the judge was temporarily disqualified by interest, relationship, sickness or absence: *Kelley v. Edwards*, 38 M. 210.

35. A judge of probate was re-elected, but died before the commencement of his term, and an appointment was made by the governor to fill the vacancy. January 1st (when the new term would commence) the governor, on the supposition that there was now a new vacancy, made a new appointment. It was *held* that the second appointment was void, and that under the constitution the person first appointed would hold until a successor was elected and qualified: *People v. Lord*, 9 M. 227.

36. Where a vacancy existed in the office of recorder of Detroit, and a circuit judge was performing the duties under designation by the common council, and no election had been ordered by the council to fill the vacancy, the electors of the city could not fill it at the regular city election (1865): *People v. Witherell*, 14 M. 48.

37. The city council of Grand Rapids can fill an office held by its appointment where there is no one holding for a regular term: *Saunders v. Grand Rapids*, 46 M. 467.

III. TENURE; RESIGNATION.

38. A public office is not a contract relation; and the legislature, when not restrained by the constitution, may abolish or modify at will official tenures and profits: *Wayne Auditors v. Benoit*, 20 M. 176.

39. The terms of the circuit judges and regents of the university, elected in the ninth and tenth judicial circuits, under the act of Jan. 29, 1858, commenced as soon as they had been duly declared elected: *People v. Garlock*, 5 M. 284.

40. H. S. § 667, which provides that, when a vacancy in a county office shall have been filled by appointment of the governor, the appointee shall hold for the unexpired portion of the regular term, cannot constitutionally apply to the office of judge of probate, or be regarded as repealing the statutes providing for special elections to keep that office filled: *People v. Lord*, 9 M. 227.

41. An appointment by the governor under Const., art. 6, § 14, to fill a vacancy in the office of probate judge, is not merely for the residue of the term in which the vacancy occurred; the appointee holds until the place is filled by a new election: *Ibid*.

42. The governor cannot, by any provision in the commission appointing a probate judge to fill a vacancy, limit the appointment, or make its continuance depend upon his pleasure: *Ibid*.

43. Where the statute prescribes the duration of an official term, it is not competent for the appointing power to restrict the term to a shorter period in making the appointment: *Stadler v. Detroit*, 13 M. 346.

44. The city physicians of Grand Rapids are not authorized by the charter to hold over where their successors are not chosen within a fixed time after their terms expire and a vacancy occurs in the office: *Saunders v. Grand Rapids*, 46 M. 467.

45. Where by a city charter a justice of the peace appointed to fill a vacancy can hold only until a certain date, his office ends then absolutely, and a judgment thereafter rendered by him is void: *Edison v. Almy*, 66 M. 329 (June 18, '87).

46. A circuit judge who has sent in his resignation to take effect in five days is during that time still in possession of his office: *Bashford v. People*, 24 M. 244.

47. The tender of a resignation by a supervisor or clerk of a township by filing the same with the clerk is not valid and effectual as a resignation so as to relieve the officer of his official character, without an acceptance by the

township board, or an appointment to fill the vacancy: *Edwards v. United States*, 103 U. S. 471; *Thompson v. United States*, 103 U. S. 480.

And see *MANDAMUS*, §§ 242, 243.

48. An officer's resignation is presumptively shown as to third persons where the resolution appointing his successor recites such resignation and where a person of the same name as the former officer signs the other's official bond: *Bird v. Perkins*, 33 M. 28.

IV. PROOF OF OFFICIAL CHARACTER; OFFICERS DE FACTO.

49. It cannot be presumed that a *de facto* official has neglected to make any necessary qualification: *First National Bank v. St. Joseph*, 46 M. 526.

50. One who is shown to have been an officer at a certain time must, till the contrary is shown, be presumed to continue such till the expiration of the term for which he is elected: *Kinyon v. Duchene*, 21 M. 498.

51. Parol evidence is admissible to prove official character: *Scott v. Detroit Young Men's Society*, 1 D. 119; *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 D. 124; *Facey v. Fuller*, 13 M. 527; *Jhons v. People*, 25 M. 499.

52. Where the question of official character arises collaterally, parol evidence is admissible to show an actual incumbency *de facto*: *Druse v. Wheeler*, 22 M. 439.

53. Parol proof is admissible to show who are the officers of a school district: *Crane v. Bennington School District*, 61 M. 299.

54. In a collateral proceeding one's official character is sufficiently shown by a resolution of appointment which recites his predecessor's resignation, and by proof that he proceeded to the discharge of his duties without his right being questioned: *Bird v. Perkins*, 33 M. 28.

55. In the case of a public officer or of an officer of a corporation, proof that the individual has notoriously acted as such, is, in general, sufficient proof of official character: *Albright v. Cobb*, 30 M. 355.

56. Public proclamation by the inspectors of election, after canvassing the votes, that a specified person has been elected, is sufficient *prima facie* evidence of his right to the books and papers of the office to warrant an order to the former incumbent to show cause why he should not surrender them to his successor: *Curran v. Norris*, 58 M. 512.

57. The statutory proceeding for compelling a public officer to surrender the books and papers of his office to his successor (H. S. ch. 295) is summary and does not apply for deter-

mining the latter's right to the office, but only for ascertaining whether he has been declared by the proper authority to have been elected or appointed: *Ibid*.

58. The right to office of a person in actual possession cannot be questioned collaterally: *Wayne Auditors v. Benoit*, 20 M. 176.

59. The actual legal right of one in possession of an office cannot be tried in a collateral proceeding between third persons: *Facey v. Fuller*, 13 M. 527; *Druse v. Wheeler*, 22 M. 439.

60. But in any such proceeding the mere proof of user by any one who knows the fact will be sufficient to show his official action valid: *Facey v. Fuller*, 13 M. 527.

61. In a trial for perjury, evidence that the oath was administered in open court by one who was acting as deputy clerk is sufficient proof of his official character. In a collateral proceeding it is enough that he was shown to be an officer *de facto*: *Keator v. People*, 33 M. 484.

62. The title to office cannot be tried collaterally: *Jhons v. People*, 25 M. 499; *Frey v. Michie*, 68 M. 323.

63. One's title to the office of judge of the recorder's court of a city cannot be tried in a collateral proceeding by *certiorari* upon a judgment given by him as such recorder, there being no claim that any other person is the duly elected and qualified recorder: *People v. Gobles*, 67 M. 475.

64. Where it is not disputed that a person is an officer *de facto*, the court will not consider in a collateral proceeding whether he is or is not an officer *de jure*: *Mead v. Ingham County Treasurer*, 36 M. 416; *Moiles v. Watson*, 60 M. 415.

65. The filing of an information to test the right to a public office is conclusive between the parties that relator was not acting as officer and that respondent was; but it is not competent for them to settle between themselves which should hold the office, none having that right who was not lawfully chosen; and that, if controverted, must be settled by public authority: *School District v. Root*, 61 M. 373.

66. Where no officer *de jure* is provided for there can be no officer *de facto*: *Carleton v. People*, 10 M. 250.

67. A person actually obtaining an office with the legal *indicia* of title is a legal officer until ousted, so far as to render his official acts as valid as if his title were not disputed: *Wayne Auditors v. Benoit*, 20 M. 176.

68. Persons in the actual and unobstructed exercise of office must be held to be legal offi-

cers, except in proceedings where their official character is the issue to be tried as against themselves: *Thons v. People*, 25 M. 499.

69. The county of Muskegon was organized by setting off certain townships from existing counties. The act for that purpose was passed Feb. 4, 1859, and provided for an election of county officers "at the annual township election to be held in April next," which officers were to enter upon the discharge of their duties "on the first day of June next." But the act not having been ordered to take immediate effect, did not take effect under the constitution until May 16, 1859. An election was nevertheless held for county officers in April, 1859, and the persons who were chosen qualified and entered upon the discharge of the duties of county officers at the time specified. *Quere* (the court being equally divided), whether, even if the election in April, 1859, was unconstitutional, the persons elected were not *de facto* county officers: *Carleton v. People*, 10 M. 250; *Rice v. Ruddiman*, 10 M. 125.

70. There can be no holding over *de facto*, whether a successor is chosen or not, where the statute under which an officer is appointed to fill a vacancy in an elective office provides that the person so appointed shall hold only until a certain date after appointment: *Edison v. Almy*, 66 M. 329.

V. POWERS AND ACTS.

(a) *In general.*

As to presumptions favoring performance of official duty, regularity of acts, etc., see EVIDENCE, §§ 1565-1583.

As to officers' capacity to sue, see PARTIES, §§ 20-26.

71. Officers who are created by statute must confine their acts within its provisions and not go beyond the plain letter: *Sibley v. Smith*, 2 M. 486; *James v. Howard*, 4 M. 446.

72. Where a board's time of meeting is, by statute, made subject to the direction of the members, there can be no doubt of the legality of the meeting when all meet: *Hulin v. People*, 31 M. 323.

73. The action of a board of several persons must be determined by their votes as evidenced by their record; their action separately amounts to nothing, and their joint action must be evidenced in some way as the act of a lawful majority; and it requires affirmative action to create a term of time "specified:" *Newcombe v. Chesebrough*, 33 M. 321.

74. A public officer charged with the duty of selling property for the best price cannot

himself become the purchaser; as, a county treasurer, who has charge of the sale of lands for delinquent taxes: *Clute v. Barron*, 2 M. 192.

75. Public officers are agents so far as to be within the rule prohibiting agents from acting for themselves and their principals in the same transaction: *People v. Overysse*, 11 M. 222.

76. The same person cannot act at the same time in a public and in a private capacity, and in antagonistic interests: *Stevenson v. Bay City*, 26 M. 44.

77. One who is shown to be entitled to the office of supervisor can compel his predecessor to deliver to him the books and papers pertaining to the office (H. S. § 8539): *Schneider v. McIvor*, 58 M. 511.

78. A public officer can define and change the duties of the clerks in his office if no rule of law or custom prevents: *Throop v. Langdon*, 40 M. 874.

79. A sheriff's duties relate to the execution of orders, judgments and process of courts: the preservation of the peace; the arrest and detention of persons charged with the commission of public offences; the service of papers in actions, etc.; they are connected with the administration of justice and not with the collection of the revenue: *White v. East Saginaw*, 43 M. 567.

80. A prosecuting attorney can in nowise control the action of the sheriff when a writ has been placed for execution in the latter's hands; the sheriff may take his advice if doubtful as to his duty; but is not relieved from responsibility if he fails in his duty in following it: *Beecher v. Anderson*, 45 M. 543.

81. A sheriff as such has no authority to employ watchmen for the jail or to rent an office for himself at the expense of the county: *Peck v. Kent County Supervisors*, 47 M. 477.

82. Where a sheriff had been authorized by resolution of the board of supervisors to draw on the county treasurer for such sums as should be necessary to defray his actual expenses incurred in the county's behalf, it was presumed, in the absence of proof to the contrary, that moneys received by him under the resolution were disbursed by him thereunder for the county's benefit: *Mecosta Supervisors v. Vincent*, 65 M. 503.

(b) *Of deputies.*

83. Where a deputy officer executes a deed in the absence of his principal, the proper method is to perform the act in the name of his principal: *Westbrook v. Miller*, 56 M. 143.

84. An indorsement or certificate signed by

the deputy auditor-general upon a county treasurer's bond to account for moneys to be received at tax sales has the same force and validity as if signed by the auditor-general: *People v. Johr*, 22 M. 461.

85. The deputy auditor-general may sign a tax-deed in his own name when his superior is absent: *Westbrook v. Miller*, 56 M. 148; *Drennan v. Herzog*, 56 M. 467; *Fells v. Barbour*, 58 M. 49.

86. The deputy of the county clerk need not sign writs in the name of the clerk. Where a writ was signed "W. M., deputy clerk," in the absence of the clerk, it was held sufficient: *Calender v. Olcott*, 1 M. 344.

87. Where a statute provided that in the absence of the county treasurer from his office the deputy treasurer might perform all his duties, it was held that such deputy might administer an oath which another section of the statute provided might be administered by the county treasurer, or, in his absence, by a justice of the peace: *Malonny v. Mahar*, 3 D. 432, 1 M. 26.

88. A sheriff cannot constitute a deputy for a particular act except by warrant in writing: *People v. Moore*, 2 D. 1.

89. The under-sheriff may act in his own name, and need not sign a return to a writ made by him in the name of the sheriff: *Calender v. Olcott*, 1 M. 344; *Allen v. Hazen*, 26 M. 142.

90. A deputy-sheriff may in his own name sign the return to a writ, and he may take a replevin bond in his own name: *Wheeler v. Wilkins*, 19 M. 78.

91. The deputy-sheriff may perform sheriff's duty in latter's inability in case of tie vote for county clerk: *Evans v. Sutherland*, 41 M. 177.

92. Under H. S. § 596, expressly empowering sheriffs to serve any process which constables may execute, no special direction for the purpose is necessary; and a deputy-sheriff is not liable in trespass on the ground of want of authority to act, for levying a justice's execution addressed to any constable, etc.: *Foster v. Wiley*, 27 M. 244.

93. Where judgment in trover has been obtained against a deputy-marshal for goods which he has taken while acting under specific instructions from the marshal and in reliance on the latter's oral promise to indemnify him, he can maintain a bill against the marshal to obtain protection against such judgment by compelling the latter to indemnify or pay him: *Robinson v. Bennett*, 50 M. 500.

VI. LIABILITIES.

(a) To the public.

94. County treasurers are responsible as debtors, and not merely as bailees, for the county funds that come into their hands, and their liability is absolute and not affected by unavoidable loss or accident: *Perley v. Mustogon*, 32 M. 182.

95. If an officer is required or authorized by law to make deposits in any particular place or with any particular person, he is usually, if not universally, protected from any further responsibility so long as he leaves it there and is not a guarantor of the safety of the deposit; and the ownership and the liability appear to be co-extensive: *Ibid*.

96. One who has borrowed county funds and repaid them to the treasurer cannot afterward be held liable to the county for them; as he is the only legal custodian of the county funds, no one can be required to do more than put them in his hands: *Ibid*.

97. If one can be made liable to the county for receiving money from the county treasurer with a dishonest understanding, knowing it to be county funds required to be officially accounted for and restored, it must be by an action on the case or a bill in equity, and not an action for money had and received; the action would not be based on the source or identity of the particular fund which had been used, but would depend rather upon the state of the accounts; the wrong is much in the nature of a voluntary transfer of property in fraud of creditors. And it is questionable how far the county is directly damnified even in such a case, if the treasurer's sureties are responsible, or damnified beyond the deficiency in their ability: *Ibid*.

98. The county treasurer's books are presumed to show the amount due from the treasurer to the county: *Bay City State Bank v. Chapelle*, 40 M. 447.

99. A county treasurer who receives moneys collected on a judgment in an action upon the bond of a predecessor accounts for them precisely as if he had originally collected them from the tax-payers: *Marquette v. Ward*, 50 M. 174.

100. A special commissioner named by statute to lay out a state road is not a county officer, though required, for purposes of record, to render an account of his proceedings to the board of supervisors; and funds held for him by a county treasurer are not county funds: *Alcona v. White*, 54 M. 503.

101. The county clerk is liable for such entry and jury fees only as are actually paid to him. The entry of a cause on the calendar is *prima facie* evidence of the payment of the entry fee, which, however, may be rebutted. But the fact that a jury was had in a case affords no presumption that it was called on demand of a party, and a jury fee paid: *People v. Treadway*, 17 M. 480.

102. The act of 1858, p. 145, § 62 (H. S. § 1064), which required that, upon the neglect of any township treasurer to pay over or account for the taxes required by his warrant to be collected, the county treasurer should issue his warrant to the sheriff, requiring him to collect the money of the township treasurer and his sureties, did not authorize the issue of such a warrant against a defaulting ward collector of Detroit: *James v. Howard*, 4 M. 446.

103. Such warrant is constitutional process (see CONSTITUTIONS, §§ 25, 52), but the provisions of the statute are open to criticism; and the warrant must show facts which presumptively confer jurisdiction to issue it: *Weimer v. Bunbury*, 80 M. 201; *Bringard v. Stellwagen*, 41 M. 54.

104. A township treasurer's consent that a warrant might issue against him unless he paid in the deficiency within a specified time is no defence for subsequently issuing a defective warrant: *Bringard v. Stellwagen*, 41 M. 54.

105. A township treasurer is not to be presumed in default for not paying over taxes levied in the roll until it is shown that the roll, with a proper warrant attached, was duly delivered to him; and the county treasurer will not be authorized to issue his warrant without evidence that such roll and warrant were so delivered: *Weimer v. Bunbury*, 80 M. 201.

106. Where the action of the tax collector is made a necessary preliminary to that of the county treasurer, due performance on their part will not be presumed, in the absence of evidence, for the purpose of charging him with having failed to perform duty; the presumption of official regularity applies with equal force to each: *Ibid.*; *Houghton Supervisors v. Rees*, 34 M. 481.

107. Whether public funds can be transferred by a public treasurer to his successor by giving certificates of deposit, *quere*: *Lansing v. Wood*, 57 M. 201.

108. Where an official treasurer is sued by his successor for the funds in his official custody, he cannot base his defence on any question of the regularity of the proceedings

whereby the funds came into his possession: *Mason v. School District*, 34 M. 229.

(b) *Liability of officers to individuals injured by their acts or negligence.*

Officers not liable on contract made in behalf of village, see CITIES AND VILLAGES, § 120.

1. Judicial duties; immunity of judicial action.

109. A public officer is liable for a failure to perform duties of a judicial nature if he neglects them maliciously: *Raynsford v. Phelps*, 43 M. 342.

110. No action lies against a judicial officer for any act done by him in the exercise of his judicial functions, provided the act, though done mistakenly, was within the scope of his jurisdiction: *Gordon v. Farrar*, 2 D. 411; *Wall v. Trumbull*, 16 M. 228.

111. This principle of protection is not confined to courts of record, but applies as well to inferior jurisdictions; the only difference being that authority in a court of general jurisdiction is to be presumed, while the jurisdiction of inferior tribunals must affirmatively appear on the face of their proceedings: *Wall v. Trumbull*, 16 M. 228.

112. The rule of protection where the action is judicial does not depend upon whether the tribunal is a court or not, but upon the nature of the duties to be performed: *Ibid.*

113. No action lies against a judicial officer for taking jurisdiction in good faith upon an erroneous determination of the sufficiency of the appearance for the defence: *Morton v. Crane*, 39 M. 526.

114. Officers having *quasi* judicial powers are not liable for injury resulting from acts done understandingly and in good faith within the limits of an authority expressly granted to them: *Van Deusen v. Newcomer*, 40 M. 90.

115. Where the duties of an officer or board are *quasi* judicial no action can be predicated upon an erroneous performance: *Bay County v. Brock*, 44 M. 45.

116. Inspectors of election act judicially in determining whether a person offering to vote has the requisite qualifications as to color or descent to entitle him to vote as a "white male citizen," under the constitution; and they are not liable to an action for improperly refusing a vote because the person offering it was partly of African descent: *Gordon v. Farrar*, 2 D. 411.

117. A township board acts judicially in auditing claims against the township, and its members are not liable individually for erroneous allowances: *Wall v. Trumbull*, 16 M. 228.

118. There can usually be no remedy for a wrong where such remedy would involve the review of lawfully vested discretion. There must generally be an excess of jurisdiction an act outside of the discretion vested: *Sage v. Laurain*, 19 M. 137.

119. A justice of the peace who, without authority, issued an execution against a surety, was held liable as a trespasser: *Shadbolt v. Bronson*, 1 M. 85.

120. In an action against a justice of the peace for issuing an execution against a man's property it is not enough for him to show that he was such justice, and then rely upon the execution and the judgment, unless it appears that the necessary proceedings have been taken to give him jurisdiction of the parties and the cause, or rightfully to call his official powers into action: *Clark v. Arford*, 5 M. 182, 187.

121. A magistrate who issues a warrant for arrest where he has no jurisdiction is liable: *Johnson v. Maxon*, 28 M. 129, 134.

2. Ministerial duties.

122. A public officer is liable to private individuals for injuries resulting to the latter from his failure to perform ministerial duties in which the latter have a special and direct interest: *Raynsford v. Phelps*, 43 M. 342.

123. Failure to perform a public duty is actionable by an individual only when the public duty also involved a duty to himself as an individual, and where he has suffered a special and peculiar injury by reason of its non-performance: *Moss v. Cummings*, 44 M. 359.

124. A discretionary power cannot excuse an officer for refusal to exercise his discretion: *Merrill v. Humphrey*, 24 M. 170.

125. Acts done by authority of a valid statute and with reasonable care will not support any liability for resulting damage: *Highway Commissioners v. Ely*, 54 M. 173.

126. If a justice of the peace, without special instructions, receive bank-bills, current as money at the time, from a constable who has collected the same on the execution, and enter satisfaction of the judgment, he will be liable to the judgment creditor for the amount, even though he afterwards tender him the bills received and they became depreciated or worthless: *Heald v. Bennett*, 1 D. 513.

127. A justice of the peace who receives uncurrent or depreciated bank-bills of a con-

stable, and gives a receipt for the amount on the back of the execution, is liable, as for so much money had and received, to the judgment creditor, who is not restricted to the remedy given him by statute on the justice's bond: *Welch v. Frost*, 1 M. 80.

128. A sheriff or constable has no power to receive anything except the legal currency of the United States on an execution in his hands for collection, and if he does so, without special instructions, it is at his own risk: *Heald v. Bennett*, 1 D. 513; *Welch v. Frost*, 1 M. 80.

129. Superintendents of the poor, being empowered by statute to keep up farms for the employment and support of the county poor, may be held liable, as owners and managers of the farm property, for injuries resulting from their management, such as negligently allowing fires kindled upon the premises to extend to the property of others, or permitting the spread of contagious diseases from the farm stock to other animals, or allowing the stock to trespass upon other lands: *Rowland v. Kalamazoo Poor Superintendents*, 49 M. 553.

130. Whether the trustees of a school district contracting for the building of a school-house are liable to an action by a material-man injured by their neglect to take from the contractor the bond required by H. S. §§ 8411a-8411c, for the payment for labor performed or materials furnished, *quere*; but *held*, that such material-man, having been a surety upon the bond given by the contractor to the school district for the performance of the work, could not sue the trustees for such negligence, his relations to the parties to the contract being such that he must be held chargeable with notice that no bond for his protection was required by the board: *Owen v. Hill*, 67 M. 43 (Oct. 6, '87).

131. H. S. § 8608, providing for a penalty against a sheriff who shall refuse, for more than six hours after demand and tender of the legal fees, to deliver a copy of a warrant to one whom he has arrested, is valid: *Stewart v. Riopelle*, 48 M. 177.

132. An officer in whose hands a writ of attachment is placed is required to use such diligence in the levy and filing as men ordinarily would exercise in their own business to protect their interests; and failing in this, he is negligent, and liable in damages: *Springett v. Colerick*, 67 M. 362.

133. The fact that property upon which an attachment might have been levied was subject to a mortgage that has since been foreclosed cannot excuse the sheriff's neglect to attach it: *Ibid*.

134. A sheriff, before levying a writ of attachment upon property of the title to which there is reasonable doubt, has a right to require a bond of indemnity, and to refuse to execute the writ by seizure of such property until the bond is given: *Smith v. Cicotte*, 11 M. 383.

135. If the sheriff seizes the property on promise of bond of indemnity by the creditor, which the latter afterwards fails to give, and the property is then taken away by the adverse claimant, the sheriff may make return to the writ setting forth these facts, and he will be protected: *Ibid*.

136. In an action against a sheriff for damages on account of his failure and neglect to serve a writ of attachment, when the defence is set up that the property upon which he was instructed to levy had been transferred to an assignee by assignment for the benefit of creditors, defendant must show that a bond had been filed by the assignee within the time required by statute, or that creditors had intervened to enforce the assignment: *Beard v. Clippert*, 63 M. 716.

137. In an action against a sheriff for failure to execute a *capias ad respondendum* it is admissible to show what plaintiff's debtor said in regard to his circumstances at the time of purchasing goods of plaintiff's agent: *Hatch v. Saunders*, 66 M. 181.

138. In an action against a sheriff for permitting the escape of a defendant in a *capias*, evidence is admissible to show that the debtor was arrested by the sheriff or his deputy: *Ibid*.

139. Damages for a sheriff's omission to serve process are in their nature unliquidated: *Schwab v. Coots*, 44 M. 463.

140. Where the sheriff fails to return an execution the debt is assumed to be lost, and the execution creditor is *prima facie* entitled to recover of him the full amount; the sheriff is, however, allowed to show in defence that the defendant had no property from which the money could be made, however faithfully he had performed his duty. But a showing that the judgment debtor had transferred the lands levied on, prior to the levy, does not make out this defence where the lands, notwithstanding this transfer, were sold on the execution for the amount of the debt. And where the execution creditor bid in the lands himself, the sheriff cannot defend on the ground that the damages sustained by the creditor were sustained as a purchaser and not as an execution creditor: *Dunphy v. Whipple*, 25 M. 10.

141. In an action by special bail against the sheriff for having falsely returned to an

execution that the defendant could not be found in his county, it cannot be said as matter of law that the sheriff's neglect to inquire of the plaintiff in the execution as to the defendant's whereabouts tended to show negligence: *Koch v. Coots*, 48 M. 80.

142. A sheriff is answerable for the fault of his deputy in making an improper return of a writ: *Frosser v. Coots*, 50 M. 263.

143. A declaration claiming damages from the sheriff for the false return of a writ is sufficient after judgment to support a recovery, though the return had been made by deputy: *Ibid*.

144. If an officer with an execution misuses the property levied upon, he is liable to the execution debtor therefor, and possibly to the creditor also, if the sale on the execution fails to satisfy the judgment: *Stilson v. Gibbs*, 40 M. 42.

145. A deputy-sheriff having levied upon wheat in the mow, threshed and removed it before selling it, and in an action of trespass on the case for unlawful seizure and sale sought to justify by showing that when he had levied on a former crop under the same judgment the defendant had removed it in the night. But as it appeared on cross-examination that it was removed by the holder of a chattel mortgage thereon, it was held that the justification, if it was one, failed, and that the evidence should have been stricken out; *Stilson v. Gibbs*, 46 M. 215.

146. An officer who has levied on a crop of wheat and threshed it can be held responsible for what has been wasted in threshing as well as for what has been taken: *Stilson v. Gibbs*, 58 M. 280.

147. A sheriff who attempts to sell goods covered by a writ of replevin previously served upon himself or his receiptor becomes a wrong-doer: *Mayhue v. Snell*, 37 M. 305.

148. A sheriff who has had judgment in replevin for goods seized by him under an execution is not liable for not thereafter setting it aside as exempt, unless requested: *McGuire v. Galligan*, 57 M. 39.

149. An officer sued for exceeding his authority in making a levy has the burden of showing the extraordinary circumstances justifying his action: *Stilson v. Gibbs*, 40 M. 42.

150. Where trover is based on a wrongful levy, the fact that as part of the proceedings the proceeds of the goods seized were credited to the plaintiff is no bar to the action, and can only be shown in mitigation of damages; and that only if the plaintiff assented to the credit: *Bringard v. Stellwagen*, 41 M. 54.

151. If a sheriff wrongfully levies upon

goods and retains his fees from the proceeds, he is liable for conversion even though he causes the rest to be formally credited upon the alleged indebtedness: *Ibid*.

152. In trover against a sheriff, by parties claiming property levied on by him, a judgment in favor of the party for whom the sheriff levied must be specially alleged and proved to authorize defendant to introduce evidence showing that a chattel mortgage given by the debtor, under which plaintiff claims, is fraudulent: *Comstock v. Hollon*, 2 M. 355.

153. A sheriff was sued for acts of his deputy in enforcing an execution. The execution was introduced as part of the plaintiff's case. *Held*, that the sheriff's right to show that it issued on a valid judgment followed as of course: *Stilson v. Gibbs*, 40 M. 42.

154. An individual tax-payer of a school district cannot sue the moderator to recover back his share of a tax which the district was compelled to pay through the moderator's illegal conduct: *Wall v. Eastman*, 1 M. 268.

155. It seems that an individual tax-payer has no right of action against a supervisor for assessing property on a false valuation except on the ground of fraud or malice; the wrong is one to be redressed by public prosecution: *Moss v. Cummings*, 44 M. 359.

156. The presumption that a public officer has done his duty applies to an assessor who has omitted lands from assessment, if the facts as shown do not exclude it: *Perkins v. Nugent*, 45 M. 156.

157. One who had purchased the equity of redemption of certain mortgaged lands, after a tax had been assessed thereon, had certain personal property on the land, but the tax collector falsely returned *nulla bona*, and the tax became a lien on the land, from which the owner of the mortgage had to redeem after foreclosure. *Held*, that the latter had a right of action at common law against the collector for injury resulting to him in being compelled to redeem from the tax sale: *Raynsford v. Phelps*, 43 M. 342.

158. A tax sale based upon a void tax does no such injury to a mortgagee of land as will sustain an action for damages against the tax collector as for making a false return of unpaid taxes; and in such suit the collector is not estopped by his return from showing that the tax was void: *Raynsford v. Phelps*, 49 M. 315.

159. A tax collector who has levied on property is not necessarily a trespasser *ab initio* in keeping it a little longer than is necessary in giving notice and making sale. If

the detention is lawful, the expense of it is a lawful charge; if not, the excess may be recovered in a proper action: *Bird v. Perkins*, 88 M. 28.

3. Protection by process.

160. A ministerial officer executing, in good faith and without oppression, a warrant regular upon its face and issued by an officer having jurisdiction of the subject-matter, will be protected by the warrant, and is not required to look beyond it for his authority to serve it: *Ortman v. Greenman*, 4 M. 291; *Dunn v. Gilman*, 84 M. 256.

161. As a general rule, a sheriff or other officer cannot justify under process issued by a court or officer having no jurisdiction of the subject-matter: *People v. Rix*, 6 M. 144.

162. But where the jurisdiction of the subject-matter, in the tribunal issuing process, depends upon matter of fact, the existence of which cannot be determined from the law and which is not of public notoriety, a ministerial officer will not be held bound to ascertain it at his peril, unless the law has clearly given him the right to demand the information and to determine the fact: *Ibid*.

163. Where, therefore, the statute conferred jurisdiction of certain proceedings only, as was claimed, upon the circuit court commissioner of the county holding the senior commission, and did not provide a period when the term of either should commence, or what should be the date of the respective commissions, but the governor might appoint and issue commissions at any time; and no provision was made for making public the fact of the priority of either, or by which it could be obtained in any county office, and no power given to the sheriff to demand inspection of the commissions or to require the information from the proper state office, it was *held* that the sheriff who had obeyed process issued in such proceedings by the commissioner who in fact held the junior commission (though the sheriff was not shown to have known that fact), and delivered up, in pursuance of such process, property which he had attached, was not liable on his official bond for so doing: *Ibid*.

164. Where a writ is bad on its face — *e. g.*, where it was issued under and expressly refers to an unconstitutional statute — any one seeking to enforce it is a wrong-doer: *First National Bank v. Walkins*, 21 M. 483.

165. An officer is not protected in what he does under the authority of a superior if the latter acts under an invalid statute: *Swart v. Kimball*, 48 M. 442.

166. A sheriff who seizes property outside of his county is a mere trespasser, and his writ does not protect him: *Craig v. Grant*, 6 M. 447.

167. So with a federal marshal who, under a provisional warrant in bankruptcy, seizes property outside of his district: *Carr v. Phillips*, 39 M. 319.

168. An officer is protected by process fair on its face even though he has outside knowledge of illegalities: *Wall v. Trumbull*, 16 M. 228; *Bird v. Perkins*, 33 M. 28.

169. An officer is justified in obeying any process which appears to be lawfully issued to him, and which apprises him of no legal reason why he should refrain from doing so: *Mathews v. Densmore*, 43 M. 461.

170. An officer does not render himself liable in trespass for proceeding in good faith to serve a justice's execution after he has been told by defendant that an appeal has been taken, where the justice insisted that the appeal had not been perfected; he has a right to rely upon his process until he is officially notified of its having been superseded: *Foster v. Wiley*, 27 M. 244.

171. An officer, in executing a search-warrant fair on its face, and issued by a court having jurisdiction over the subject-matter, is not liable for his official acts in following in good faith the command of his writ and the official directions of the court; and this is so though it be made clearly to appear that the property seized had not in fact been stolen, and that the party suing out the writ was not entitled to its possession: *Dunn v. Gilman*, 34 M. 256.

172. Property in an officer's possession by virtue of a valid search-warrant is in the custody of the law, though the proceedings on such writ be not conclusive as to ownership; an owner claiming that his rights have been interfered with by such proceedings has no remedy against such officer: *Ibid.*

173. A county treasurer's warrant under act 228 of 1875, to raise the amount of a liquor tax by distress and sale, would, if fair on its face, be a sufficient protection to the officer executing it, in proceedings against him for tort: *Wood v. Thomas*, 38 M. 686.

174. A sheriff when sued in trespass is protected by an execution fair on its face: *Watkins v. Wallace*, 19 M. 57.

175. An officer will be protected in the service of an attachment fair on its face and appearing to have been issued by a magistrate having jurisdiction of the subject-matter: *People v. Rix*, 6 M. 144; *Michels v. Stork*, 44 M. 2.

176. A writ of attachment, if valid on its face, though issued upon a defective affidavit, protects the marshal who executes it when he is sued for seizing the property of the attachment debtor (reversing on this point *Mathews v. Densmore*, 43 M. 461): *Mathews v. Densmore*, 109 U. S. 216.

177. An invalid writ of attachment does not justify the officer who executes it in seizing property in the possession of mortgagees: *Mathews v. Densmore*, 43 M. 461.

178. An officer who levies an attachment upon the property of a third person is a trespasser, and his writ does not protect him from personal liability for his wrong doing: *Weber v. Henry*, 16 M. 399.

179. Where property not belonging to the execution debtor is taken the taking is necessarily tortious and is always a trespass: *Heyman v. Covell*, 36 M. 157.

180. A federal marshal is not protected in seizing property belonging to one person under a writ directed against others: *Ibid.*; *Mabley v. Superior Court Judge*, 41 M. 31; *Carew v. Matthews*, 41 M. 576; *Mathews v. Densmore*, 109 U. S. 216.

181. A writ of replevin will not protect an officer in taking the property described from some person besides the defendant, owning and holding it in good faith: *Sexton v. McDowd*, 38 M. 148.

182. An officer's process protects him from liability for the mere entry of premises to seize property, where there is no other act to make it wrongful: *Finn v. Peck*, 47 M. 208.

183. The claim that an officer wholly loses the protection of his writ when he proceeds to an unauthorized sale goes to the question of damages only, and is for the jury: *Stilson v. Gibbs*, 40 M. 42.

184. Where an officer levied upon goods, and after offering them for sale was informed of the existence of a mortgage upon them (which mortgage did not stipulate for possession of the goods by the mortgager), and he then changed his offer to a sale of the defendant's interest in the goods, and sold accordingly, it was held that a sale in this form did not protect him from liability to the mortgagee, who might either replevy the goods or recover the value from the officer and purchaser: *Eggleston v. Mundy*, 4 M. 295.

185. A supervisor is not liable in trespass on account of any errors or defects in the description of real estate in the assessment roll: *Clark v. Axford*, 5 M. 182.

186. A supervisor is protected by the township clerk's certificate of the amount of township indebtedness to be raised in placing the

same upon the roll, notwithstanding the same is made up in part of illegal allowances made by the township board of which he was a member: *Wall v. Trumbull*, 16 M. 228.

187. A tax assessment is in the nature of a judgment, and cannot be assailed for fraud or irregularity in a suit against an officer who enforces it under process which on its face is valid: *Moss v. Cummings*, 44 M. 359.

188. A township treasurer is not liable in trover, or in any action of tort, for enforcing the collection of an excessive tax, if his warrant therefor from the supervisor is fair on its face: *Byles v. Genung*, 52 M. 504.

189. When a supervisor is sued in trespass for the taking of personal property under a warrant for the collection of taxes, issued by him and attached to the tax-roll, evidence that he was at the time supervisor, and, as such, signed the warrant, does not make out a *prima facie* justification. He must also show that the roll had come to his hands from the board of supervisors, as provided by law, and that the various taxes had been certified to him for assessment by the competent authorities. When his jurisdiction has been thus shown, his acts will be presumed regular and valid till the contrary appears: *Clark v. Azford*, 5 M. 182.

190. A supervisor executing a tax-warrant is held to a knowledge of any illegality manifest on the face of it, and is responsible for his acts under it: *Atwell v. Zeluff*, 26 M. 118.

191. The rule that a ministerial officer is protected in the execution of process, issued by a court or officer having jurisdiction of the subject-matter, and of the process, if it be regular on its face and do not disclose a want of jurisdiction, merely protects him from personal responsibility as a trespasser or wrongdoer; it does not confer upon him any right of or to property, and he may be sued in replevin for goods wrongfully taken: *Beach v. Botsford*, 1 D. 199; *Le Roy v. East Saginaw C. R. Co.*, 18 M. 233; *Adams v. Hubbard*, 30 M. 104; *Gidday v. Witherspoon*, 35 M. 368.

192. And in such an action he cannot justify under his execution unless he first shows a valid judgment under which it issued: *Beach v. Botsford*, 1 D. 199; *Gidday v. Witherspoon*, 35 M. 368; *Andrews v. Smith*, 41 M. 683; *Wilson v. Martin*, 44 M. 509. See *McGuire v. Galigan*, 53 M. 453.

193. A tax-warrant regular upon its face and disclosing no illegality cannot avail the collector when sued in replevin for seizing goods not subject to taxation: *Le Roy v. East Saginaw C. R. Co.*, 18 M. 233.

VII. OFFICIAL. OATHS AND BONDS.

(a) General matters.

194. The absence of any record in the town books showing that the assessors were sworn does not furnish *prima facie* evidence that they were not sworn: *Sibley v. Smith*, 2 M. 486.

195. A county officer who is kept out of office by a person holding a certificate of election is not required by H. S. §§ 638, 639 to file his oath and bond until his title is established: *People v. Mayworm*, 5 M. 146; *People v. Miller*, 16 M. 56.

196. A sheriff failing to renew his bond, as required by H. S. § 584, but continuing to execute the duties of his office, will be deemed to be sheriff *de facto*, at least, by virtue of his election, and the sureties on his prior bond will continue to be liable for his acts: *Dunphy v. Whipple*, 25 M. 10; *Springett v. Cole- rick*, 67 M. 362.

197. Whether the constitutional provision (art. 10, § 5) that "in default of giving such security his office shall be deemed vacant" was designed to go further than to authorize the legislature to provide by law for treating the office as vacant, *quere*: *Dunphy v. Whipple*, 25 M. 10.

198. Where a proper order was made upon the township treasurer by a highway commissioner who was performing the duties of his office, though he had not yet filed his official bond, payment was enforced: *McKenzie v. Baraga Township Treasurer*, 39 M. 554.

199. A county treasurer's bond to the board of supervisors for the faithful performance of his official duties was held valid, though there was no statute requiring it: *St. Joseph Supervisors v. Coffenbury*, 1 M. 355.

200. The bond required by H. S. § 1098 to be given by the county treasurer to the auditor-general to account for moneys received at tax sales is an official one, which he must give: *Attorney-General v. St. Clair Supervisors*, 30 M. 388.

201. As the obligee named in a sheriff's bond has no active duty to perform, and no voice in taking or approving of the bond, or in bringing suit upon it, and there is no importance in the people being named as obligee rather than the county, it being important only that some party shall be named as promisee in whose name suits may be brought, the provision for naming the people may be treated as directory merely, and a bond sufficient in substance, which parties have given

for the statutory purpose, which has had the statutory approval, and on which the public have relied, will be held sufficient to give the intended security: *Bay County v. Brock*, 44 M. 45.

202. The amount and sufficiency of the county treasurer's bond are left by H. S. §§ 520 and 483 to the discretion of the board of supervisors: *McGregor v. Gladwin Supervisors*, 87 M. 888.

203. A township treasurer should be a party to his own official bond: *Johnston v. Kimball*, 39 M. 187.

204. Bonds referred to in our statutes as "official" are, it seems, bonds of public officers only: *Bissell v. Wayne Probate Judge*, 58 M. 287.

(b) *Execution and approval of bonds.*

205. Public officers, in receiving official bonds into their custody, have a right to rely upon the genuine signatures of sureties voluntarily affixed to a regular document conforming to law, without making inquiry of the sureties: *McCormick v. Bay City*, 23 M. 457.

206. One who signs in blank as surety on an official bond and delivers it to his principal for completion makes the latter his agent for the whole business, and is estopped and bound by the action of such agent without regard to any secret instructions as to the condition on which it should be completed: *Ibid.*

207. Sureties are not liable on an official bond signed by them alone, and without their knowledge or consent accepted without the signature of a principal who is named upon its face as the primary debtor. And the burden of proving their consent to its being so accepted is on those who try to enforce it: *Johnston v. Kimball*, 39 M. 187.

208. A surety cannot officially approve his principal's official bond: *Stevenson v. Bay City*, 26 M. 44.

209. Where a statute requiring that an official bond shall be accepted and approved by a municipal council points out no mode of proceeding, whatever mode is taken should carry with it some action sufficient to express in an affirmative manner the assent and approbation of the body: *O'Marrow v. Port Huron*, 47 M. 585.

210. The delivery to the auditor-general by a county treasurer of the bond provided for by H. S. § 1098 is in law part of its execution, and is an action upon such bond if no affidavit denying its execution is filed as provided by circuit court rule 79, no proof of ex-

ecution or delivery is required: *People v. Johr*, 22 M. 461.

211. Where such bond, when produced on trial, contained an indorsement signed by the deputy auditor-general as such deputy, entitling and describing the bond, stating the years and amount for which it was given, and that it was recorded and filed on a day named, such indorsement was held to show an approval and acceptance by the auditor-general: *Ibid.*

212. Although the auditor-general might, and as between himself and the people ought to, have refused a county treasurer's bond which had not been approved by the prosecuting attorney and by both the circuit court commissioners of the county, as required by the statute under which it was given, and so, also, might and ought to have declined to allow the treasurer to make the tax-sales and have appointed another person to make them, as the statute contemplates and provides on failure of the treasurer to give the statutory bonds; yet, when on the faith of the defective bond the treasurer has been allowed to make, and has made, the sales, and has received the money, neither he nor his sureties on the bond, it being in all its provisions in strict compliance with the statute, can be heard to object that, when so executed and accepted, it was not properly approved. The statute requirement as to the approval of the bond is for the security and protection of the public, and not of the obligors of the bond. The people in their corporate capacity, having brought suit upon this bond as executed, are at liberty, so far as the obligors upon the bond are concerned, to waive the approval thereof, and the obligors cannot insist upon the approval for the purpose of defeating their liability: *Ibid.*

213. Where a common council, whose acceptance and approval of an officer's bond is required by charter, instead of passing on the bond orders it to be handed to the mayor for his decision, and he refuses to consider it, and hands it back to the clerk directing him to put it on file, which he does, it does not bind the sureties: *O'Marrow v. Port Huron*, 47 M. 585.

214. The sheriff-elect entered into a bond, with sureties, which was intended for his official bond as sheriff, and was in all respects correct except that the county was named as obligee therein when the statute required the bond to be given to the people. The board of supervisors approved of the bond as sufficient. Held, that as the statute empowered and required the supervisors to examine and ap-

prove the bond and the sureties therein, this approval was final and the bond a valid official bond: *Bay County v. Brock*, 44 M. 45.

(c) *Construction of bonds; sureties' liabilities.*

215. The obligations created by an official bond to pay over moneys are not created by the bond, but imposed by law, and the bond is but a collateral security for the performance of a legal obligation: *Spencer v. Perry*, 18 M. 894.

216. A recital in an official bond that the officer's term is one year, whereas such term is fixed by statute at two years, so that it cannot be limited by the body appointing the officer, is mere surplusage, and the bond is valid for two years: *Stadler v. Detroit*, 18 M. 846.

217. A city treasurer's bond to the county treasurer, after stating the duty covered by the obligation, added the words, "reference being had to the warrant of the supervisor of said township attached, or to be attached, to the assessment roll of the year 1872." This clause was in excess of the statutory terms of the bond. *Held*, that it was surplusage and a nullity, and that the absence of a warrant could not make the bond inapplicable to moneys actually received on the roll: *Berrien County Treasurer v. Bunbury*, 45 M. 79.

218. The obligation of an official bond is *strictissimi juris* and nothing can be taken by construction against the obligors; the sureties do not undertake for anything beyond the letter of their contract and are only liable within its terms: *Detroit Savings Bank v. Ziegler*, 49 M. 157.

219. The official bond of a city officer must contain everything required by the charter, and, while the council may add to it by requiring further duties, none of the prescribed duties can be omitted, nor can an absolute obligation be made a conditional one: *Detroit v. Weber*, 26 M. 284.

220. An officer cannot reasonably be compelled to give a bond going beyond his official duties, as a condition of being allowed to hold his office, but the bond ought properly to be regarded as the measure of official duty: *Perry v. Muskegon County*, 32 M. 132.

221. Where a city charter requires the controller to perform "such duties in relation to the finances as shall be prescribed by ordinance," an ordinance imposing upon him the duty of negotiating city bonds is proper, and his sureties are liable for misappropriation by him of the proceeds of such bonds or for any

unauthorized disposal of the bonds themselves: *Stevenson v. Bay City*, 26 M. 44.

222. Duties not yet existing and not germane to an office are not within the contemplation of sureties on the official bond, nor properly covered by their obligation. To bind the sureties the duties must plainly belong to the office: *White v. East Saginaw*, 43 M. 567.

223. Sureties upon a city treasurer's bond cannot claim release from liability because of the neglect of a committee of the council to examine the treasurer's accounts monthly as required by ordinance, or because they signed such bond in reliance upon the controller's assurance that such examinations had been or would be made, which was untrue in fact: *Detroit v. Weber*, 26 M. 284.

224. Sureties on an official bond are only liable for their principal's default as officer, acting under color of office: *Stevenson v. Bay City*, 26 M. 44.

225. Sureties on an official bond are discharged when the duties and obligations of the office are essentially changed by statute and their risk increased: *White v. East Saginaw*, 43 M. 567.

226. An official bond covers whatever duties were imposed before it was given, even though such duties were added after the passage of the statute prescribing the terms of the bond: *Marquette County v. Ward*, 50 M. 174.

227. A county treasurer's bond requires him to account for "all moneys which shall come to his hands as treasurer." *Held*, that this covers moneys collected by him under the liquor tax law, though they neither belong to the county nor go into the county treasury: *Ibid*.

228. Sureties on a bond given by a city or county treasurer are not liable in an action thereon for moneys not collected, or moneys lawfully accounted for: *Berrien County Treasurer v. Bunbury*, 45 M. 79.

229. Sureties upon the official bond of a township treasurer for his second term of office only are not liable for the default of their principal during his first term: *Paw Paw v. Eggleston*, 25 M. 36.

230. The sureties on the official bond of a city treasurer are liable only for the defaults of their principal during the term for which their bond was given, and where he has held the office for preceding terms their liability is to be determined by considering the term for which they were sureties by itself, precisely as if he had succeeded some one else, they to account for all the public money that came into his hands during that term: *Detroit v. Weber*, 29 M. 24.

231. In an action upon the bond of a defaulting treasurer the question arose whether the defalcation was confined to his second term of office for which the bond was given. His cash book showed that at the end of his first term there was no deficiency, but he testified that there was "probably" or "possibly" a deficiency, though he did not discover it for a year afterwards. *Held*, that there was nothing in this to show a defalcation during the first term: *Marquette v. Ward*, 50 M. 174.

232. Where moneys cannot lawfully be paid out of a public treasury, except upon warrants drawn according to statute, moneys paid by the treasurer without such warrants cannot be set up in reduction of liability on his bond: *McCormick v. Bay City*, 28 M. 457.

233. Sums actually paid during one term of office are not to be disallowed to the sureties for that term because their principal, in stating his account at the close of the previous term, had credited himself upon his books with the same sums, by false entries made to help force a balance: *Detroit v. Weber*, 29 M. 24.

234. The sureties in a county clerk's official bond are liable for his act in fraudulently countersigning and filling up a warrant upon the county treasurer which had been signed in blank by the chairman of the board of supervisors. Though this was a misuse of his authority it was nevertheless an official act: *People v. Treadway*, 17 M. 480.

235. The statute expressly vests all control and use of state prison moneys in the agent, and he cannot be relieved from his responsibility, nor can any of his statutory power be transferred to the clerk, and if the agent allows the clerk to receive and pay out prison funds in his absence it is as the agent's own servant and not officially as clerk: *Hulin v. People*, 81 M. 323.

236. The statutes and the lawful rules of the inspectors of the state prison are the measure of the official liability of the clerk of the state prison for which his sureties are bound, and it reaches only what would come within a fair construction of each: *Ibid*.

237. The state prison inspectors cannot, by their rules and regulations, impose upon the clerk any duties that will allow him, as such, to do any part of the agent's responsible work that involves discretion or requires security: *Ibid*.

238. Where the gist of an action is the alleged embezzlement of funds of the state prison by the clerk of that institution, as their lawful custodian, the question of his liability for falsifying accounts, as a distinct ground of

action, is outside the issue; so is the inquiry how far his bond is meant as a guaranty against dishonesty or speculation where his office gives him an opportunity to steal through propinquity to others who have charge of the funds: *Ibid*.

239. An officer's sureties are not bound by a false settlement of his accounts: *Rice v. Sidney*, 44 M. 37.

240. In a particular case, in an action against the treasurer's bondsmen, it was *held* that they were entitled to show a ratification, by the municipal body empowered to settle with the outgoing treasurer, of a transfer, from him to his successor, of the public funds by means of certificate of deposit: *Lansing v. Wood*, 57 M. 201.

(d) *Actions on official bonds.*

241. Where, under H. S. § 8335, the officer accepting a replevin bond has become liable for the sufficiency of the sureties therein, an action lies against his sureties on his official bond without first obtaining judgment against him: *People v. Lee*, 65 M. 557.

242. A township treasurer's bond, running to "the people of the state of Michigan," instead of to the township, cannot be sued in the township's name. The state and the township being distinct political organizations, the error in the bond could not be avoided by any averment in the declaration: *La Grange v. Chapman*, 11 M. 499.

243. A suit on the bond of the clerk of the state prison is properly brought by the people through the attorney-general: *Hulin v. People*, 31 M. 323.

244. Where a statute designates a public officer as the obligee in a bond required from another officer for the public security, he became the proper person to bring suit on the bond in the absence of statutory provisions: *Berrien County Treasurer v. Bunbury*, 45 M. 79.

245. In an action by a public officer upon a bond running to him in his official character, the objection that it is not enough to designate the plaintiff by his official title alone, but that his individual name should be given, is one that must be taken before pleading to the merits, and cannot be raised for the first time in the supreme court: *Ibid*.

246. A county may sue in the name of its board of supervisors upon its treasurer's bond given to the board; and any objection that it should have sued in its own name is waived by pleading the general issue: *Johr v. St. Clair Supervisors*, 88 M. 582.

247. By statute, the party for whose use a sheriff's bond is sued is to be deemed the plaintiff in the action. Where one of two persons jointly entitled to prosecute the action died, it was held that action should be brought in the name of the people for the use of the survivor alone, without joining the administrator of the one deceased: *Jackson v. People*, 6 M. 154.

248. A declaration on the official bond of a county treasurer in an action to recover moneys which have passed into his hands describes such moneys properly enough as moneys of the county where, as in the case of liquor taxes, the county collects them only as trustee for its towns and villages: *Marquette County v. Ward*, 50 M. 174.

249. A declaration on a coroner's official bond for taking an insufficient replevin bond sufficiently alleges a breach if it alleges that defendant did not well and faithfully perform his duty in the premises as coroner, and under this allegation makes the necessary specifications: *People v. Lee*, 65 M. 557.

250. In an action to charge the county treasurer on his bond with failure of duty in not forwarding lists of delinquent tax lands to the auditor-general, plaintiff must show, not merely that returns of such lands were in fact made by the collectors to the treasurer, and that no transcripts were received by him from the auditor-general up to April 1st, but, also, that the transcripts were not forwarded within a reasonable time after actual returns to the treasurer by the collector: *Houghton Supervisors v. Rees*, 84 M. 481.

VIII. COMPENSATION.

(a) In general.

251. Under Const., art. 4, §§ 15 and 17, the speaker of the house of representatives cannot, as speaker, receive any compensation or mileage beyond what he receives as a representative: *People v. Whittemore*, 2 M. 306.

252. Where services performed by an officer are within his official duties, either when he takes the office or afterwards imposed, his salary, however inadequate, must be his only compensation: *Detroit v. Redfield*, 19 M. 376.

253. When the law implies that a particular service is already paid for by an official salary, it can raise no implication of an agreement to pay for it separately: *Detroit v. Whittemore*, 27 M. 281.

254. Where one who had been employed to conduct a suit on behalf of a city was afterward appointed to the salaried position of

city counsellor, whereby the conduct of the suit fell within the line of his official duty, it was held that he could not recover on a *quantum meruit* for services rendered therein after the appointment was made, and that all previous understandings relating to services which it then became his duty to perform officially terminated by and merged in the appointment, unless otherwise expressly agreed: *Ibid.*

255. A city controller directed and authorized by the common council to receive, as agent of the city, certain bounty bonds and apply them in the manner designated by the special act authorizing their issue, is entitled to the same compensation that any other person so designated should have, and the law implies a promise to pay what his services are reasonably worth: *Detroit v. Redfield*, 19 M. 376.

256. A police justice appointed by a common council to act with a committee of its members in revising the city ordinances is entitled to compensation from the city for his labor, whether the revision is passed or not; and the committee has nothing to do with his employment beyond dividing the labor, which, however, would bear on the amount of his services: *McBride v. Grand Rapids*, 47 M. 236.

257. An officer cannot recover compensation for voluntary services outside of the line of his duties, if rendered on his own responsibility in a case wherein he alone could not have hired their performance: *Perry v. Cheboygan*, 55 M. 250.

258. A police justice is entitled to a reasonable compensation for his services (unless intended to be gratuitous) for extra-official services in aiding the city to collect fee-moneys from the county: *McBride v. Grand Rapids*, 47 M. 236.

259. The members of the board of water commissioners of the village of Cheboygan render their services, as such, gratuitously: *Perry v. Cheboygan*, 55 M. 250.

260. Under H. S. § 476 a county clerk whose compensation has been fixed by the board of supervisors at a specified annual salary is entitled to no additional compensation for services as clerk of the board of supervisors: *Stetson v. Calhoun Supervisors*, 36 M. 10.

261. A county clerk whose salary has been fixed by the board of supervisors is not entitled to extra compensation from the county for services as building committee, and in purchasing wood and trees, etc., except upon a showing of facts from which a contract for payment could be implied: *Ibid.*

262. Where the board of supervisors has

fixed an annual salary for the county clerk to be in full for all services and so understood by him, he cannot afterwards claim extra compensation for services as such clerk, in criminal cases, drawing juries, recording births, deaths, etc., for which the law allows specific fees, with the intent, it would seem, that these should be paid in addition to the sum allowed him as clerk of the board of supervisors: *Ibid.*

263. A board of supervisors can include in the compensation of the county treasurer the amount received for office charges or payments under the tax-laws: *Munger v. Bay Supervisors' Clerk*, 88 M. 807.

264. An official stenographer may recover for copies of testimony—other than the one he is required to file upon request—made by him under special contract. So long as stenographers discharge their official duties properly, they are not required to devote all their time to the public service: *Langley v. Hill*, 63 M. 271.

265. The statutes relating to stenographers contemplate that they shall receive annual salaries, and are accordingly on duty not only during the sessions of court but at other times, so that a *per diem* allowance by a board of supervisors, in place of a salary, is unauthorized: *Stockwell v. Genesee Supervisors*, 56 M. 221.

266. A stenographer appointed for a judicial circuit cannot compel the individual counties composing it to pay him specific sums by way of compensation, without showing that their respective quotas toward his statutory salary amount to those sums: *Goodale v. Marquette Supervisors*, 45 M. 47.

267. A township assessor, in making an assessment that he had no right to make, *e. g.*, for a liquor tax belonging to a village, is not the township's agent, and is not entitled to compensation from it: *Decatur v. Decatur Township Board*, 83 M. 835.

268. An officer who accepts payment of the amount allowed for his services by the proper auditing board may not make a further claim for the same services: *Perry v. Cheboygan*, 55 M. 250.

269. Where an officer claims compensation for services not within the scope of his duties they cannot be shown to have been gratuitous by evidence that he made no claim for compensation in conversation with third persons who would have no authority to make compensation or fix the amount thereof. But his statements that he made no claim or did not expect or desire pay would be competent: *McBride v. Grand Rapids*, 49 M. 239.

(b) *Salaries.*

270. Under the constitution of 1850, and prior to the present organization of the supreme court, the office of judge of the supreme court was not a distinct office from that of circuit judge, but two sets of duties were attached to one office under the latter designation. And the salary of the circuit judges, as fixed by the constitution, was a remuneration for all duties attached to the office, and could not be increased by the legislature: *People v. Auditor-General*, 5 M. 193.

271. It is competent for the legislature to provide, as it did in 1863 (Laws of 1863, p. 332), that the salary of the clerk of the police court of Detroit should be prescribed by the common council of Detroit, notwithstanding it was payable by the county of Wayne; and the county board of auditors could not reduce the salary after the common council had fixed it: *People v. Wayne Auditors*, 13 M. 233.

272. A board of auditors, after fixing a salary, cannot change such salary without some further action, spread upon its record: *Miller v. Wayne Auditors*, 41 M. 4.

273. Acceptance of a salaried public office does not establish contract relations between the officer and the public whereby the latter must continue to pay the same salary as was paid at the time of the appointment to office: *Wyandotte v. Drennan*, 46 M. 478.

274. The legislature has ample power to fix the salaries of public officers, and, unless restrained by the constitution, to change them at any time, even during the official term, and it can delegate this power to municipal councils: *Ibid.*

275. A probate judge is a state, not a county, officer, and under the constitution his salary cannot be controlled by the board of supervisors, which has at most the delegated power of fixing the salary once, and cannot change it, if at all, until the legislature directs: *Douvielle v. Manistee Supervisors*, 40 M. 585; *Chapman v. Berrien*, 50 M. 811.

276. Act 188 of 1871 gave the board of supervisors power to fix the salary of the judge of probate. Act 140 of 1873 amended it, but did not alter the effect of this provision. *Held*, that the mere fact of the amendment and reenactment of the empowering clause did not authorize a board to fix again a salary which they had once fixed: *Chapman v. Berrien*, 50 M. 811.

277. An official salary may be deemed to bind the parties paying and receiving it if no other compensation is provided by law, and the officer accepts it as fixed and goes into of-

fice on those terms; but this presumption does not arise where the salary has been cut down after the officer's election: *Douvielle v. Manitowish Supervisors*, 40 M. 585.

278. A probate judge's silent acceptance of his salary as reduced by the board of supervisors from the amount previously allowed him is an implied assent to their fixing it at the lower rate, and precludes him from claiming more: *Thomas v. St. Clair Supervisors*, 45 M. 479.

279. A protest is ineffective unless made to the body having power to act upon the subject-matter. If a salaried officer protests that the amount of salary allowed him is less than he is entitled to, it is of no effect to make the protest to the functionary entrusted with the mere duty of paying him, if the latter has no part in fixing the salary, and is under no obligation to report the protest to the body which fixes it: *Ibid.*

280. Const., art. 10, § 10, does not give the Wayne county board of auditors power to fix the compensation of its members, and a statute fixing salaries is valid: *Kennedy v. Gies*, 25 M. 83.

281. H. S. § 558 empowered boards of supervisors to fix the compensation of the prosecuting attorney from time to time. Act 154 of 1879 provided that annual salaries should be fixed by the board on or before the 31st of October, before the officers' terms began, and should not be changed during the term. *Held*, that this would not prevent a board which had fixed a salary before act 154 was passed from changing it for the second year of the prosecuting attorney's term. Such a construction does not make the act retrospective: *Knappen v. Barry Supervisors*, 46 M. 22.

282. The act of a board of supervisors in fixing the salary of a prosecuting attorney does not constitute a contract between the latter and the county; and where the constitution does not prevent, the legislature can authorize the board to change the salary so far as it has not already been earned, even though a part of the official duties are duties to the state: *Ibid.*

283. The three counties comprising a judicial circuit, through their board of supervisors, assented to the employment of a stenographer without stipulating as to his compensation, and this, under the statute, left his salary at \$2,000. This sum was apportioned among the counties and paid for four years, when one of the counties was detached from the circuit. *Held*, that the previous assent of the counties to the employment of a stenographer at the statutory salary did not con-

tinue to be binding after this change, but that they were entitled to make new arrangements: *Hitchcock v. Blackman*, 47 M. 146.

284. One of the counties continued without objection for three years to pay its proportion of \$2,000, but the supervisors then voted to reduce the sum to be paid by them to \$800. The stenographer received this without protest for four years, when the supervisors withdrew their assent to the employment and refused to pay longer. *Held*, that under these circumstances it must be deemed that no arrangement has been made, except so far as one party has paid and the other received money in satisfaction of services previously rendered: *Ibid.*

285. The stenographers' act (H. S. § 6504) contemplates that a person appointed stenographer should hold his office indefinitely, and independently of the county and the electors; that the appointment may be made for an entire judicial circuit whatever the number of counties it contains; and that it may be made for a single county when the circuit contains no more. But the entire circuit cannot be compelled to pay the appointee more than the statutory salary of \$2,000, and this should be apportioned by the circuit judge among the counties composing it (§ 6511): *Goodale v. Marquette Supervisors*, 45 M. 47.

286. The city council of Cadillac has power to fix the health officer's salary, and the board of health cannot bind the council by assuming to fix it: *Coleman v. Cadillac*, 49 M. 322.

As to salary of physician employed by BOARD OF HEALTH, see that title, § 6.

287. Where a common council is empowered by statute to fix the salary of an officer, merely appropriating for payment a less sum than had been paid before does not fix the salary at the smaller sum if the council continues to allow monthly bills at the former rate: *Fountain v. Jackson*, 50 M. 260.

288. Where the statute provides that an officer's salary shall be fixed by a board of public works and approved by the common council, the latter body alone cannot reduce it: *Fountain v. Jackson*, 50 M. 15.

That salary of member of board of public works could be reduced during his term of office, see CITIES AND VILLAGES, § 130.

289. An officer *de jure* cannot enforce as against the public the payment of the salary of his office while another is *de facto* the incumbent: *Wayne Auditors v. Benoit*, 20 M. 176.

290. Where a person duly elected has ob-

tained judgment of ouster against one who has kept him out of office under cover of a certificate of election from the returning board, he may qualify after obtaining judgment, and is entitled to recover damages for the time he was excluded, and the entire official salary from the beginning of the official term, without deduction for the services of the incumbent or his own earnings while ousted. The salary belongs to the office and is independent of the amount of work personally done by the officer: *People v. Miller*, 24 M. 458.

291. A legally elected officer, duly qualified and standing ready to perform the duties of his office, is entitled to the salary, if it has not been paid, even though debarred from the performance of his duties by an intruder acting in good faith: *Comstock v. Grand Rapids*, 40 M. 397.

As to enforcement of payment by *MANDAMUS*, see that title, §§ 161, 162.

(c) *Fees.*

292. A legislative intention to give unearned fees cannot be inferred from uncertain terms in a statute: *Lyon v. Grand Rapids*, 30 M. 253.

293. A legal "folio," in computing fees as compensation, is 100 words (H. S. § 9034): *Thornton v. Sturgis*, 38 M. 639.

294. The fees allowed by statute for services in certain cases, over which the board of supervisors have no control, cannot include anything not clearly within their terms: *Lee v. Ionia Supervisors*, 68 M. 330.

295. The statute of 1840, allowing to "the secretary of state, auditor-general, any clerk," etc., one dollar a day "for attending on subpoena with bills, records or other written evidence," was held not to apply to a justice in attendance with his docket. He is not such a clerk as was intended by the statute: *Pren-tiss v. Webster*, 2 D. 5.

296. A police justice's trial fee of one dollar may be charged in all cases, however short the trial, but not where the case was dismissed or a *nolle prosequi* entered: *Grand Rapids v. Kent Supervisors*, 40 M. 481.

297. A justice can have no trial fee in a criminal cause where defendant pleads guilty: *Potts v. Jackson Supervisors*, 47 M. 635.

298. An agreement by a justice of the peace with a litigant that he will charge no fees unless the judgment in his case is collected is void, and prevents the justice from recovering his fees if the party refuses to pay them: *Willem v. Bateson*, 63 M. 309.

As to payment of justice's fee for return, see *APPEAL*, §§ 490, 491.

299. Where the law fixes the sheriff's fees for services, as in the case of services for collections on execution, it is not competent for him to make an agreement with the debtor or with his receptor for goods seized on execution for any additional compensation: *Burk v. Webb*, 32 M. 173.

300. A sheriff who has levied only on real estate is not entitled to poundage until the property taken is sold or money collected on the judgment; and this is especially so where statutory provision is made for the payment of his fees: *Peck v. City National Bank*, 51 M. 353.

301. A sheriff's charges for executing a justice's *mittimus*, issued at the request of bail in criminal cases for the re-arrest of their principal (H. S. § 9488), are not a public charge: *Kinney v. Kent Supervisors*, 51 M. 620.

302. A sheriff has no legal right to traveling fees for writs not served: *Clark v. Ingham Supervisors*, 38 M. 658.

303. A sheriff has no statutory right to fees for travel in bringing back goods seized on a search-warrant, he already having been allowed for service of the writ and travel to place of service: *Vincent v. Mecosta Supervisors*, 52 M. 340.

304. A sheriff is not entitled to payment for merely colorable attendance in court, when he can produce no certificate from the court showing his attendance, and when he has, in fact, been employed elsewhere. But he should be paid for any substantial performance of his duty: *Ibid.*

305. The fee allowed to the sheriff by H. S. § 9055 for every prisoner committed or discharged is not allowable for every time a prisoner is taken to court and brought back to jail; the words "committed" and "discharged" refer only to the beginning and end of the term of imprisonment, and between those periods the prisoner, unless he escapes, is in continual custody: *Lee v. Ionia Supervisors*, 68 M. 330.

306. Sheriffs' fees for board of prisoners in criminal cases are not fixed by law and are within the discretion of the board of supervisors: *Cicotte v. Wayne County*, 59 M. 509.

307. H. S. § 9055, giving such sums to the sheriff for services not otherwise provided for as the board of supervisors may allow, does not apply to services performed by him not in the capacity of sheriff but in that of an agent to serve a requisition for a fugitive from justice: *Follansbee v. St. Clair Supervisors*, 67 M. 614 (Nov. 10, '87).

308. The county was liable for the sheriff's fees in prosecutions under the prohibitory

liquor-law: *Mixer v. Manistee Supervisors*, 26 M. 422.

309. A constable who refuses to serve process unless greater fees are promised than the law allows cannot recover upon such agreement or upon the *quantum meruit*: *Andrews v. Wilcoxson*, 66 M. 553.

310. Under H. S. § 9054, allowing a constable a *per diem* compensation for attending court on the order of a magistrate, no fee can be charged for constructive attendance, nor for actual attendance unless a trial or examination is being held: *Hickey v. Oakland Supervisors*, 62 M. 94.

311. Constables in Detroit are entitled to compensation for serving the criminal process of justices of the peace: *Allor v. Wayne Auditors*, 48 M. 76.

312. H. S. § 9056, fixing the fees of a circuit court commissioner in criminal examinations, applies where he takes the evidence in person. Where it is done by a stenographer the board of supervisors is the final judge of proper compensation: *Pistorius v. Saginaw*, 51 M. 125.

313. A defendant's refusal to pay stenographer's fees does not exclude his defence, certainly after trial has begun: *Wheaton v. Atlantic Giant Powder Co.*, 41 M. 718.

314. That a town clerk remits or gives credit for his fees for filing a mortgage concerns none but the officer: *People v. Bristol*, 35 M. 28.

As to township clerk's fees for return to *certiorari*, see CERTIORARI, § 117.

315. Under the statutes in force in 1861 and 1862 the township-treasurer had the right to retain of his own authority only two per cent. of the taxes of 1861 collected by him for his fees, where neither the electors of the township, nor the supervisor, had fixed his compensation at a higher rate: *Texas v. Wager*, 13 M. 39.

316. Whether the supervisor has the right to fix the compensation when the electors have neglected to do so, *quere*: *Ibid*.

317. Where the electors did not determine what percentage should be added to the taxes for the collection expenses, and the supervisor added two and a half per cent., and, in his warrant for their collection, directed the treasurer to retain that amount for his fees, and the treasurer retained four per cent., paying over the remainder, it was held that he was liable to the township for the amount he had retained over two and a half per cent.: *Ibid*.

318. The tax-collector in Detroit in 1855-56 was not entitled to collect from the city a per-

centage for his fees on taxes returned uncollected: *Kelsey v. Detroit*, 7 M. 315.

319. Under the charter of Grand Rapids the city marshal cannot claim fees upon local assessments collected by the city clerk after the marshal has returned the rolls as uncollected after the expiration of the warrants attached: *Lyon v. Grand Rapids*, 30 M. 253.

320. An amendment to the tax law allowing sale to be made to pay the marshal's fees will not apply to assessments made before the passage of the law unless plainly so intended: *Fuller v. Grand Rapids*, 40 M. 395.

That warrant for collection of local assessment may include percentage for collector's fee, see CITIES AND VILLAGES, §§ 203, 204.

321. Retention of fees by an officer from the proceeds of a wrongful levy renders him liable for conversion: *Bringard v. Stelluragen*, 41 M. 54.

Fees as costs, and taxation thereof, see COSTS.

PARENT AND CHILD.

- I. CUSTODY OF CHILDREN.
- II. ADOPTION; EMANCIPATION.
- III. RIGHT TO CHILD'S EARNINGS.
- IV. OBLIGATION TO SUPPORT, ETC.
- V. DEALINGS BETWEEN PARENTS AND CHILDREN.
- VI. MISCELLANEOUS MATTERS.

As to the disabilities, etc., of INFANTS, see that title.

I. CUSTODY OF CHILDREN.

As to GUARDIANSHIP, see that title.

1. Neither parent has any right to the custody of a child as against the child's own welfare: *Corrie v. Corrie*, 42 M. 509.

2. Where the custody of children is disputed by their parents the children are considered to be as deeply interested as either of the parents, and the court is not disposed, even in a case of parental misconduct, to take any discretionary step that may prejudice them: *Rowe v. Rowe*, 28 M. 353.

3. In proceedings by *habeas corpus* to determine which parent is entitled to a child's custody, there should be full inquiry and examination on oath to enable the court to decide what the child's welfare requires: *Corrie v. Corrie*, 42 M. 509.

4. *Habeas corpus* will not be granted as a matter of right to change the custody of children where it does not clearly appear that such change would be for their interest: *Heather Children's Case*, 50 M. 261.

5. The court was equally divided upon the question whether *habeas corpus* should issue to compel the production of a child under guardianship here who had been removed from the state and detained abroad: *Jackson's Case*, 15 M. 417.

6. In a particular case, the court, being equally divided as to the question of a parent's right to the custody of his child, dismissed a writ of *habeas corpus* without deciding rights or prejudicing future remedies: *Stockman's Case*, 56 M. 218.

7. A resident of Washington, D. C., on his wife's death, placed, in compliance with his wife's dying wish, their child, a girl seventeen months old, in the custody of his wife's parents, who lived in Michigan, and who kept the child some years, except during a few months when she was in Washington with her father. In order to regain the child, whose health she feared would suffer in Washington, the maternal grandmother agreed in writing to return her when the father desired. Such return being refused, the father instituted *habeas corpus* proceedings wherein the question was not finally settled, the child, however, remaining with its mother's parents. The father died, leaving a will appointing his parents guardians of the child, who was about six years old, and they qualified as such in Washington, soon after the maternal grandparents qualified as guardians in Michigan. Upon *habeas corpus* brought by the father's parents it appeared that the Michigan guardians were proper persons and well able to care for the child, who was now nine years old, and who desired to remain with them, while there was some evidence against the fitness of the petitioners, whose claim was, therefore, denied: *Stockman's Case*, 71 M. — (July 11, '88).

8. Where a divorce is granted to a wife for cruelty she is *prima facie* entitled to the custody of very young children of the marriage; and children three and five years old were awarded to her though the proofs did not show her to be entirely without fault: *Klein v. Klein*, 47 M. 518.

9. A decree in a divorce case dissolving the marriage and providing for a child's custody will not be altered upon a petition that sets up no new facts or change of circumstances: *Chandler v. Chandler*, 24 M. 176.

10. A mother is not to be deprived of the custody of her child by the father's testamentary appointment of a guardian for it (H. S. § 6306): *Goss v. Stone*, 63 M. 319.

11. Nor is the mother bound by any order of a probate judge sending her child to the state public school without notice to her where

she was within the county, or to any of the child's friends or relations: *Goodchild v. Foster*, 51 M. 599.

12. The right to adjudicate as to children's custody belongs to the courts alone, and circuit court commissioners cannot act: *Rowe v. Rowe*, 28 M. 353.

II. ADOPTION; EMANCIPATION.

13. Where, on his father's death, a child was adopted by his uncle, who stood in *loco parentis* to him, and to whom he sustained the relation of an adopted child till he came of age, it is presumed twenty years from his majority, if nothing appears to the contrary, that his mother assented to his arrangement with his uncle, whatever it was, and to his emancipation from any parental control or rights that she could have asserted at the time: *Sword v. Keith*, 31 M. 247.

14. Where one has lived in another's household from early youth to the age of thirty-six years, the two treating each other as daughter and father, she may be regarded as a member of his family though not related to him by blood or marriage; and she has an insurable interest in his life: *Carmichael v. Northwestern Mutual Ben. Ass'n*, 51 M. 494.

15. A girl who had been practically though not formally adopted into a family in pursuance of an understanding that she shall be in all things as a daughter may use the family name as her own in bringing suit: *Watson v. Watson*, 49 M. 540.

16. A minor who has been adopted into a family, and performed labor for his adopted father as a child would for a parent, cannot recover for his services without an understanding or agreement that he shall; but if there is such an understanding, they constitute a valid consideration for a subsequent promise to pay: *Sword v. Keith*, 31 M. 247.

17. Where an infant is taken into a family the presumption is that neither its support nor its service is to be recompensed except as the one compensates the other: *Thorp v. Batesman*, 37 M. 68.

18. It seems that the probate judge has no authority, even on the joint application of the natural and the adoptive parents, to revoke his order of adoption made under H. S. § 6379. As to the effect of revocation of adoption, see *Morrison v. Sessions*, 70 M. 297.

19. Emancipation may take place suddenly and by express arrangement, or it may occur gradually and by conduct implying mutual assent; and even in the latter case it may be brought about in a short time: *Schoenberg v. Voigt*, 36 M. 310.

III. RIGHT TO CHILD'S EARNINGS.

20. The earnings of a minor son belong to his father unless the father has given him his time and earnings: *Allen v. Allen*, 60 M. 635.

21. But a request to charge the jury imperatively and unqualifiedly that a father is entitled to his minor son's earnings and wages should be rejected: *Schoenberg v. Voigt*, 36 M. 310.

22. And a father cannot recover for wages earned before her majority by a daughter whom he had manumitted, and where he has made no contract with her employer in regard to such wages: *Bell v. Bumpus*, 63 M. 375.

23. Where a father sues for the value of his minor son's services, and the defence of emancipation previous to the son's going to work for defendant is set up, an inquiry as to whether the boy did not ask and obtain his father's permission before going to work for a third person named was properly excluded where the record did not show at what time such other service began, or how long prior to the engagement with defendant: *Schoenberg v. Voigt*, 36 M. 310.

24. In such a suit defendant may show that the boy in the course of his service embezzled money, thus rendering his service not only valueless but positively injurious: *Ibid.*

25. Where a parent sued in *assumpsit* for the wages of his minor son, wrongfully harbored by one who had enticed him away from his father's house, it was held that, in the absence of any evidence or claim that the parties ever actually agreed together at all in regard to the minor's services, the *assumpsit* could not be so referred to any real agreement of a date later than that of defendant's enticement, as to imply that it rested on a distinct arrangement, which left the original wrong as a ground for a separate suit: *Thompson v. Howard*, 31 M. 309.

IV. OBLIGATION TO SUPPORT, ETC.

26. Where a minor son spends most of his time away from home and is allowed to retain most of the wages which he receives for his labor, a dealer who furnishes him clothing cannot recover its value from his father if the latter has never authorized the son to buy on his credit, or authorized or confirmed the transaction, and if there is no showing that the articles furnished were in any proper sense necessities, or that the father has failed in his duty to supply the son's wants; *Tyler v. Arnold*, 47 M. 564.

27. A father is under legal obligation to

provide for the support of his children, even if they remain with their mother after her divorce; and as against the public and the children he cannot escape the duty: *Courtright v. Courtright*, 40 M. 633.

28. The parental duty of giving personal care and protection to children is distinct from the duty to support them: *Ibid.*

29. Divorced persons agreed in writing that certain of their children might stay with their mother as much of the time as they wished, but that she should make no claim against the father for their support, and in consideration of this the father agreed that they might remain as aforesaid, and that he would of his own free will do for them towards their support, maintenance and education what seemed to him right, and at least would provide in store pay and provisions each year for five years an amount in value equal to fifty dollars. One child remained with its mother one year, another five, and another six, and she had to give them her personal care and protection. Held, that the father pay the mother \$50 a year for five years, not as support due the children, but as recompense to the wife for taking sole personal care of them: *Ibid.*

30. A widow is not legally bound to support her step-children: *Staal v. Grand Rapids & I. R. Co.*, 57 M. 240.

31. A father is liable for the support of his adult son in case he becomes a public charge: *Stilson v. Gibbs*, 53 M. 280.

32. But to render the father liable such adult son must be a poor person within the meaning of H. S. § 1741: *Clinton v. Laning*, 61 M. 355.

33. For the damages recoverable by a father compelled to support his adult son permanently disabled by defendant's fault, see *Ibid.* And see INTOXICATING LIQUORS, § 56.

34. The proceedings under H. S. § 1742 to compel a son to support his mother are summary, enforceable by attachment, and not reviewable on writ of error: *Smith v. Lapeer Poor Superintendents*, 34 M. 58.

As to proceedings to compel support of bastard, see BASTARDY.

V. DEALINGS BETWEEN PARENT AND CHILD.

35. In dealings between father and son there is no implied promise on either's part to pay for board, clothes, money and the like furnished in consequence of the relationship, and an express promise must be shown to support a recovery: *Allen v. Allen*, 60 M. 635.

36. In the absence of express agreement a

widow is not liable to her daughter-in-law with whom she lives for the support of herself and her imbecile son; the law implies no promise to pay by reason of the relationship: *Howe v. North*, 69 M. 272.

And see *supra*, §§ 16, 17; CONTRACTS, § 99.

37. Where a son living in his father's family expends money at his father's request and with his knowledge and assent in building a house for him, the father is liable to the son for the amount so expended, unless there was a different understanding between them: *Hillebrands v. Nibbelink*, 44 M. 413.

38. A father's settlement with his son for services after he has reached his majority is not to be discouraged, and the transfer of property made in satisfaction will not be disturbed in favor of the father's administrator where there is no proof of fraud or undue advantage: *Bowen v. Lockwood*, 26 M. 441.

39. Under the circumstances of the case a son's agreement to support his parents (for which they deeded their property to him) was held to imply support at his home and not elsewhere unless he failed in his duty: *Pratt v. Pratt*, 43 M. 174.

40. In an action for defendant's breach of a contract to provide a home for and support his father-in-law, in consideration of the latter's paying over all his wages to the former, the extent of the provocation for plaintiff's abandoning the arrangement is for the jury: *Ehlert v. Klenger*, 43 M. 61.

41. A son whose parents have turned over to him their property in consideration of his supporting them stands as their guardian and may take no advantage in dealing with them; and a mortgage extorted by him will be reduced to the actual consideration: *Bowe v. Boue*, 42 M. 195.

42. A son's dealings carried on while acting in a fiduciary capacity for his aged father, and which involved conveyances to the son for little or no consideration, were rescinded, and the court refused to allow the son for his outlays as he had been in possession of the property: *Thorn v. Thorn*, 51 M. 167.

43. Where a mother whose mind is weakened by age has dealings in reference to her property with a son who has control of it, and relies upon his integrity not to mislead her, the dealings must be characterized by perfect good faith, and the burden of establishing fairness is on those whose claims are based on such dealings: *Crawford v. Hoeft*, 58 M. 1. See CONTRACTS, § 597.

44. Under an agreement that a mortgagor should assume the burden of the mortgagee's undertaking with the latter's mother to sup-

port her for life, the compensation for which agreement was to be regulated in a particular manner and to be allowed upon the mortgage, such mortgage was held, after some years, to have been satisfied: *Gallup v. Jackson*, 47 M. 475.

45. An arrangement for the immediate and actual transfer of personalty to a son in consideration of his undertaking to support his parents, if performed, gives title as upon a present sale and authorizes the son to hold as against his father's administrator: *Chambers v. Hill*, 34 M. 523.

46. A son's agreement to support his parents during life in consideration that he is to be vested with what personalty is on their premises need not be written where his taking possession and proceeding to perform amount to a delivery and part payment: *Hill v. Chambers*, 30 M. 422.

47. An agreement by a daughter and her husband to support her father during his life is a sufficient consideration for a conveyance of the father's lands to the daughter, and, having been executed, upholds the conveyance as against a previous will: *Goff v. Thompson*, H. 60.

Further as to agreements for support and conveyances in consideration thereof, see EQUITY, §§ 251, 262, 266, 279, §16, 336.

48. A father's conveyance of land to his son without consideration is valid as against the former's administrator where no creditors claim: *Warren v. Tobey*, 32 M. 45.

49. Payment for land by a parent or one *in loco parentis*, title being taken in the child's name, raises a presumption of a donation or advancement, not of an intention to create a trust: *Waterman v. Seeley*, 28 M. 77.

50. Less positive and equivocal testimony is required to establish the delivery of a gift from a father to his children than between persons not related: *Love v. Francis*, 63 M. 181.

Further as to gifts between parent and child, see GIFTS, §§ 1, 6, 8, 13, 16-20, 27.

51. Where an aged father conveys land to his son, it being expected that the former shall remain thereon, the fact that the price paid is low (though not grossly inadequate) is not evidence that the son knew the father could not make a conveyance free of liens, nor would the fact of relationship indicate such knowledge: *Sheldon v. Holmes*, 58 M. 138.

52. In a particular case the testimony was held to show that a son was honestly indebted to his father in an amount sufficient to form an adequate consideration for a conveyance from the former to the latter, and that there

was no fraud as against other creditors in the transfer: *State Bank of Fenton v. Whittle*, 48 M. 1; *Woodhull v. Whittle*, 68 M. 575.

As to preference of parent or child by the other as creditor, and as to validity as against creditors of agreements and transfers between parent and child, see FRAUD, §§ 133-135, 146, 148, 169-173, 249-251; also, EQUITY, § 406.

Reformation of mortgage wrongly taken in son's name, see EQUITY, § 817.

VI. MISCELLANEOUS MATTERS.

That legitimacy of children is presumed, see EVIDENCE, § 1526.

That children should be made parties where their interests are involved and legitimacy is questioned, see INFANTS, § 80.

53. A father is not liable for injury from his son's careless driving, unless the son was acting for his father or under his control: *Brohl v. Lingeman*, 41 M. 711.

54. A parent who allows an unattended child to ride on a street-car is not chargeable with negligence: *East Saginaw C. R. Co. v. Bohn*, 27 M. 503.

55. A father is entitled to assert the rights of his minor child to admission to the public school: *People v. Detroit Board of Education*, 18 M. 400, 413.

56. A parent cannot release her child's right of action for an injury: *Power v. Harlow*, 57 M. 107.

57. Without express authority legal counsel cannot be engaged by a father for his son lately a minor: *Carrell v. Potter*, 23 M. 377.

58. Children cannot intervene in a divorce suit between their parents, or seek to have set aside for fraud a divorce granted their mother: *Baugh v. Baugh*, 37 M. 59.

License to parent extended to child, see LICENSE, § 19.

PARTIES.

I. IN WHAT NAME ACTION MAY BE BROUGHT OR DEFENDED.

II. PLAINTIFFS.

(a) *Who may be plaintiff; real party in interest.*

1. In general.

2. In case of assignment, etc.

(b) *Joinder of plaintiffs.*

III. DEFENDANTS.

(a) *Who proper and who necessary parties defendant.*

(b) *Joinder of defendants.*

IV. MISJOINDER OR DEFECT OF PARTIES, HOW TAKEN ADVANTAGE OF.

V. TRANSFERS PENDING SUIT; BRINGING IN NEW PARTIES; SUBSTITUTION OF PARTIES.

VI. PERSONS UNDER DISABILITY.

As to who have right of action and who are liable, see the titles of the various actions.

As to parties in equity, see EQUITY, IV.

As to parties in chancery foreclosure, see MORTGAGES, X, (c).

As to parties in suits for SPECIFIC PERFORMANCE, see that title.

I. IN WHAT NAME ACTION MAY BE BROUGHT OR DEFENDED.

See EQUITY, IV, (a).

1. The common law requires the process to state with certainty who are the parties, and does not sanction the use of a copartnership name, or generally allow anything else than the christian names and surnames of the suitors, and this is still the law of the circuit courts (see H. S. § 6872, as to justices' courts): *Barber v. Smith*, 41 M. 138, 142; *Smith v. Canfield*, 8 M. 493.

2. H. S. § 6872, permitting suits to be brought in justices' courts in partnership names, amendable afterwards by inserting the partners' names, does not apply to cases where there is no partnership in fact: *Stirling v. Heintzman*, 42 M. 449.

3. When a plaintiff, as administratrix, declares on the common counts in *assumpsit*, and states an indebtedness to the plaintiff, without showing any indebtedness to the intestate, and does not, except by the addition of the words "administratrix upon the estate," etc., at the commencement of the declaration, show that the plaintiff brings suit as administratrix, the several counts must be construed as causes of action accruing to the plaintiff in her individual character: *Barnum v. Stone*, 27 M. 332.

4. The use just after the plaintiff's name of the phrase "for the use and benefit of" some person named other than the plaintiff, in the beginning of a declaration on an insurance policy, no assignment being set forth, and no allusion made in the body of the declaration to any other interest or title than such as the plaintiff held, has no force to make the issue different from what it would have been if the phrase had been left out: *Clay F. and M. Ins. Co. v. Huron Salt, etc. Manuf. Co.*, 31 M. 346.

5. Where suit is brought upon a contract in the name of the promisee, "for the use and benefit of" another person named, the promisee is the legal plaintiff, and it is not neces-

sary to show on the trial that the contract has been assigned to the person for whose use the suit is brought: *Farwell v. Dewey*, 12 M. 436.

6. Where the law empowers a person who has a claim or cause of action to authorize another to begin and prosecute suit thereon it will be for the use and benefit of the person really entitled; the claim or cause of action is not assigned to the plaintiff: *Watson v. Watson*, 49 M. 540.

7. An administrator may sue either in his individual or his representative character for money had and received after the death of his intestate for the use of the estate, but for money received in the intestate's life-time he must sue in his representative character: *Barnum v. Stone*, 27 M. 332.

8. A foreign executor can sue in his own name on a note belonging to the estate and payable to bearer; but if the note is not negotiable, or is payable to order and not indorsed, the executor should sue in his official capacity: *Knapp v. Lee*, 42 M. 41.

9. Before the probate court has passed upon the title or possession the general administrator only can bring suit for personal property in the intestate's possession and control: *Palmer v. Palmer*, 55 M. 293.

10. A devisee or legatee cannot represent a decedent's estate in the prosecution or defence of suits: *Hillman v. Schwenk*, 68 M. 297 (March 2, '88).

11. A society that cannot be incorporated because organized to resist the enforcement of laws cannot sue in its society name for the collection of a debt: *Schuetzen Bund v. Agitations Verein*, 44 M. 318.

12. The bond of the clerk of the state prison is properly sued by the people through the attorney-general: *Hulin v. People*, 31 M. 323.

13. A county may sue in the name of the board of supervisors upon its treasurer's bond to the board: *Johr v. St. Clair Supervisors*, 38 M. 532.

14. The township cannot sue in its own name on its treasurer's bond running to the people of the state: *La Grange v. Chapman*, 11 M. 499.

15. The legislature has power to direct in what name suits by cities, villages and townships shall be brought: *Smith v. Adrian*, 1 M. 495; *Romeo v. Chapman*, 2 M. 179.

16. Prosecution for penalty under R. S. 1846, ch. 41, for selling spirituous liquor without license was properly brought in the name of the village: *Smith v. Adrian*, 1 M. 495.

17. And, in the case of the village of Romeo, should have been so brought instead of in the

name of the president and trustees of the village: *Romeo v. Chapman*, 2 M. 179.

18. A suit in behalf of a village should ordinarily be brought in the corporate name, though exceptions may be made by statute; and where the statute makes the president and trustees *ex officio* highway commissioners, a suit for the village against mill-owners to recover the cost of constructing a bridge on a street over their mill-race should be brought by them in their official name as commissioners, not in their name as a common council. But misnomer is curable by amendment: *Merrill v. Kalamazoo*, 35 M. 211.

19. Where a bequest had been made to the "corporation of the village of New Baltimore," and a probate order granted leave to sue upon the residuary legatee's bond "for the use and benefit of the common council of New Baltimore," suit was properly brought for the use and benefit of the village of New Baltimore: *Hatheway v. Sackett*, 32 M. 97.

20. The legislature has power to direct what officer shall bring any class of public actions, and what shall be done with sums collected therein: *Denver v. White River Log & Booming Co.*, 51 M. 472.

21. All public officers, even if not expressly authorized by statute, have a capacity to sue commensurate with their public trusts and duties: *Berrien County Treasurer v. Bunbury*, 45 M. 79.

22. A public officer designated by statute as the obligee in a bond required from another officer is the proper person to bring suit thereon, and the objection that the declaration should give his individual name as well as his official character must be taken before pleading to the merits: *Ibid*.

23. Supervisors being *ex officio* assessors of their respective townships, and required by law to preserve and keep all books, assessment rolls and other papers belonging to their office, may bring suits in their official character to recover possession of such rolls: *Phenix v. Clark*, 2 M. 327.

24. H. S. § 2121, authorizing the supervisor to sue in his name of office on behalf of his township for the penalty for neglecting to kill a dog that has bitten any person, etc., does not authorize the supervisor of a city ward to sue: *Bizby v. Steketee*, 44 M. 613.

25. Actions for injuries to highways and bridges cannot be brought by the township in which they are situated, but must be brought by the overseer of highways, or, if he is disqualified, by the commissioner of highways: *Denver v. White River Boom Co.*, 51 M. 472.

26. The authorities of a village become moving parties in the character of plaintiffs or petitioners when they decide to commence proceedings to open a street: *People v. Brighton*, 20 M. 57.

27. Omission to sue a municipal officer by his official title is not a substantial objection if his liability is shown: *Hart v. Port Huron*, 46 M. 428.

28. The declaration in an action by a commissioner of highways against the county surveyor for his failure to lay out a quarter section line correctly is not demurrable on the ground that defendant is sued in his individual character while described in his official: *Highway Commissioner v. Beebe*, 55 M. 187.

II. PLAINTIFFS.

(a) *Who may be plaintiff; real party in interest.*

1. In general.

See EQUITY, IV, (b).

As to who may bring EJECTMENT, see that title, §§ 18-60; also, DOWER, §§ 82, 85.

As to who can sue for injuries caused by sales of liquors, see INTOXICATING LIQUORS, §§ 30, 31.

29. It is the policy of our legislation to permit the real party in interest to sue in his own name: *Watson v. Watson*, 49 M. 540.

30. A servant, agent or attorney cannot enforce in his own name the rights of his principal or master: *Police Justice v. Kent Supervisors*, 38 M. 421.

31. An undisclosed principal who is the only person entitled may sue upon a sale made by his agent: *Jenness v. Shaw*, 85 M. 20.

32. A principal's right to sue upon a contract made by his agent is established if the agent notifies the other party that he must account to the principal; such a notification operates as an equitable assignment of the agent's interest in the contract: *Dustin v. Radford*, 57 M. 163.

33. Where an agent enters into written contract for his principal in his own name, the principal must enforce it in the name of the nominal contracting party: *Sisson v. Cleveland & T. R. Co.*, 14 M. 489, 496.

34. An action at law must generally be brought in the name of the party who holds the legal interest as distinguished from the equitable right, even though the latter embraces the exclusive interest in the benefit to

be derived from the property: *Ibid.*; *Forrest v. O'Donnell*, 42 M. 556.

35. A third person cannot sue for damages growing out of the mere breach of a contract between others; e. g., the failure to furnish machinery of the strength required by contract does not give the purchaser's servant a right of action for an injury caused him by a breakdown: *Necker v. Harvey*, 49 M. 517.

36. When one agrees to pay separate sums of money to two persons named, on land being conveyed to him, each of them may sue upon the agreement: *Rorabacher v. Lee*, 16 M. 169.

37. A written contract for the transportation of goods entered into by the real owner of the property in the name of those from whom he purchased — they having been the original shippers by another line, from which defendants received them, and required by defendants to be thus made in the name of such original shippers — may be sued upon by said real owner of the property in their names: *Sisson v. Cleveland & T. R. Co.*, 14 M. 489.

38. At common law no one could sue on an express contract except the parties to it. Under the equitable action for money had and received a beneficiary may sometimes sue, but this can only be where the parties have given him such a right as transfers the fund to his control: *Davis v. Lenawee County Savings Bank*, 53 M. 163.

39. An agreement by which A. undertakes to pay to B. \$125, and to C. \$110, provided D. should convey a certain portion of land according to the conditions of a bond executed by D. to A., gives a separate right of action to B. and C., upon which each can sue after the condition has been performed by D. or performance thereof been waived by A.: *Rorabacher v. Lee*, 16 M. 169.

40. The rule that a stranger to the consideration cannot sue on the contract does not apply where the contract was made directly with him, and he is therefore in privity with the defendant: *Monaghan v. Agricultural Fire Ins. Co.*, 53 M. 238.

41. A. cannot base an action at law against B. merely on B.'s promise to C. to pay C.'s debt to A.: *Hicks v. McGarry*, 38 M. 667.

42. An action cannot be maintained on a promise made to a third party based on a consideration moving from such third party, there being no averment of a promise to the plaintiff: *Pipp v. Reynolds*, 20 M. 88.

43. A covenant in the assignment of a contract, by which the assignee agrees to pay certain specified liabilities of the assignor under the contract, does not enable a party to whom the assignor is indebted to bring an action for

such indebtedness against the assignee: *Turner v. McCarty*, 22 M. 265.

44. The mortgagee of land cannot sue on a promise made to the mortgager by the latter's grantee to pay the mortgage, because it is a promise to a third person: *Booth v. Connecticut Mut. L. Ins. Co.*, 43 M. 299.

45. Suit was brought in the name of parties to a written contract for the benefit of assignees of such contract, and was sought to be supported by proof of labor done by the assignees in pursuance of an arrangement between them and the contracting party modifying the terms of the contract, which arrangement was not shown to have been authorized or assented to by the assignors. *Held*, that the action could not be maintained, as the modified contract was not a contract between the parties to the record: *Litchfield v. Garratt*, 10 M. 426.

46. An action for rent must be brought in the lessor's name where the lease has not been assigned: *Hecht v. Ferris*, 45 M. 376.

47. Where a lessor has conveyed the reversion with the rent, or has assigned the rent, retaining the reversion, the grantee or assignee, as the case may be, may sue for the rent: *Perrin v. Lepper*, 34 M. 292.

48. The grantee of leased land, not the grantor who by agreement has a beneficial interest in part of the rent, is the proper person to sue on the lease for rents: *Hansen v. Prince*, 45 M. 519.

49. Where, by arrangement between a minor and his father with a third party, the latter undertook to obtain without charge the highest bounty attainable on the minor's enlistment in the army, and he did obtain bounties but failed to account in part, *held*, that the father might sue in his own name for the moneys: *Spencer v. Towles*, 18 M. 9.

50. A father who has employed a person to collect damages from the seducer of his daughter may sue such person for money obtained but withheld: *Heimbach v. Weinberg*, 18 M. 48.

51. A party to a contract cannot sue upon a note deposited by the other party with a third person merely as security for fulfilling the contract, where the damages for non-fulfilment have not been determined in a suit upon the contract: *Rumney v. Coville*, 51 M. 186.

52. An individual stockholder cannot, at least before the corporate authorities refuse, on proper application, to act, bring suit for a wrong that constitutes a joint injury to all the stockholders, such as a conspiracy with some of the directors to suspend and destroy the

company's business: *Talbot v. Scripps*, 31 M. 268.

53. A single tax-payer in a school district cannot individually sue the moderator to recover back his part of a tax which the district was compelled to levy because of the moderator's illegal action: *Wall v. Eastman*, 1 M. 268.

54. Personal actions do not descend to heirs, and they cannot sue on a contract made by their ancestor unless they have a cause of action on covenants running with the land: *Bourget v. Monroe*, 58 M. 563.

55. An executor may bring trover for a conversion of the estate's goods that occurred but was not sued on in testator's life-time: *Rogers v. Windoes*, 48 M. 628.

56. The obligee's administrator can sue on a bond drawn to heirs or assigns: *Rynearson v. Fredenburg*, 42 M. 412.

57. An administrator can sue on an insurance policy for the use and benefit of a deceased mortgagee to whom it was payable: *Westchester F. Ins. Co. v. Dodge*, 44 M. 420.

58. Whoever sues upon an insurance policy must be able to enforce the whole of it; and persons named therein as payees to the extent of a partial interest only, such as mortgagees of a part of the property insured, cannot sue: *Hartford F. Ins. Co. v. Davenport*, 37 M. 609.

59. A mortgagee who for his own protection, the mortgager having neglected to insure as agreed, takes out a policy in the mortgager's name, but payable and delivered to himself, may sue thereon: *Hopkins Manuf. Co. v. Aurora F. & M. Ins. Co.*, 48 M. 148.

60. Owners of a vessel may sue in their own names on an insurance policy taken out by charterers which states that in case of total loss the insurance shall be paid to the owners: *Richelieu & O. N. Co. v. Thames & M. Ins. Co.*, 58 M. 182.

61. A debt due to two or more persons jointly must, after the death of one of them, be sued by the survivor or survivors: *Cole v. Dequindre*, W. 64; *Teller v. Wetherell*, 9 M. 464.

62. Upon the death of one of two persons jointly entitled to sue in the people's name upon a sheriff's bond, action should be brought in such name for the survivor's use without joining the administrator of the deceased: *Jackson v. People*, 6 M. 154.

63. Any one who has the right of possession under a lease can sue in an action on the case for disturbance of such right: *Ives v. Williams*, 53 M. 636.

64. Execution purchasers may sue for wood and timber wrongfully severed from the free-

hold: *Marquette, H. & O. R. Co. v. Atkinson*, 44 M. 166.

65. A landlord may bring an action for waste against his lessee's assignee: *Lee v. Payne*, 4 M. 106.

66. The reversioner is the proper person to sue for waste committed by a tenant or by any person for wrongfully cutting timber: *Howard v. Patrick*, 88 M. 795.

67. None but the owner of the inheritance can sue for such an injury to the freehold as the washing away of land: *Anderson v. Thunder Bay River Boom Co.*, 57 M. 216.

68. The girl or woman seduced may, if of full age, bring an action in her own name for seduction: *Watson v. Watson*, 49 M. 540; *Weiher v. Meyersham*, 50 M. 602.

69. Where one has transferred his interest in a partnership his transferee and the remaining partners cannot bring an action against him on a balance due to the firm on his private account before the transfer: *Learned v. Ayres*, 41 M. 677.

70. A husband cannot sue his wife on a contract that is purely executory: *Jenne v. Marble*, 87 M. 319.

71. A wife living apart from her husband can bring replevin against him for her individual property after making due demand therefor: *White v. White*, 58 M. 546.

72. A husband cannot sue in his own name on a non-negotiable due-bill belonging to his wife: *Blackwood v. Brown*, 82 M. 104.

2. In case of assignment, etc.

73. Several non-negotiable causes of action may be united by assignment in one ownership so as to enable the assignee to bring a single action: *Watertown F. Ins. Co. v. Grover & B. S. M. Co.*, 41 M. 131; *Mercantile Ins. Co. v. Holthaus*, 43 M. 423; *Crippen v. Fletcher*, 56 M. 886.

74. An assignee of a *chose in action* cannot sue where his assignor could not: *Learned v. Ayres*, 41 M. 677.

75. The assignee of the vendee's interest in a written land contract may in his own name sue the vendor for breach of his agreement: *Cook v. Bell*, 18 M. 387.

76. Action for breach of covenants of warranty running with the land cannot be brought by a mere assignee thereof while the grantee keeps the premises himself: *Ely v. Hergesell*, 46 M. 325.

77. Assignees of particular portions of a perfected labor claim cannot bring separate actions for the different amounts, even though the divisions of the claim correspond with the

periods for which the laborer was hired: *Milroy v. Spurr Mountain Iron Mining Co.*, 43 M. 231.

78. The assignee of a non-negotiable demand may still sue thereon in the name of the original contracting party, as he was compelled to do at common law: *Sisson v. Cleveland & T. R. Co.*, 14 M. 489; *Peters v. Gallagher*, 37 M. 407; *Moon v. Harder*, 38 M. 566; *Park v. Toledo, C. S. & D. R. Co.*, 41 M. 352.

79. The assignee of a non-negotiable note can sue it in his own name: *Peltier v. Babilion*, 45 M. 884.

80. Negotiable paper may always be sued by the party having the legal title in the name of another: *Bachelder v. Brown*, 47 M. 366.

81. An agent may sue in his own name a note which he holds for collection and which is payable to bearer or indorsed in blank: *Brigham v. Gurney*, 1 M. 349; *Boyd v. Corbitt*, 37 M. 52; *Moore v. Hall*, 43 M. 143; *Coy v. Stiner*, 53 M. 42.

82. When, by indorsement for collection, authority is given to an agent to sue in his own name on negotiable paper, the legal title in trust is transferred, and the authority to collect is not revoked by the death of the principal and owners: *Moore v. Hall*, 43 M. 143.

83. One holding a note as collateral security may, with the owner's assent, sue it in his own name: *Loddell v. Merchants', etc. Bank*, 33 M. 408.

84. One need not be the real or beneficial owner of a note payable to bearer to enable him to recover; but he cannot claim to recover as owner upon a note payable to bearer to which he did not obtain title until after he began suit: *Hovey v. Sebring*, 24 M. 232.

85. Where a note is payable to order an indorsement in blank by the payee does not prevent his suing on the note still in his hands: *Kerrick v. Stevens*, 58 M. 297.

86. Mere assignees of negotiable paper cannot sue in their own names where not holders by negotiable transfer: *Redmond v. Stansbury*, 24 M. 445; *Robinson v. Wilkinson*, 38 M. 299; *Spinning v. Sullivan*, 43 M. 5; *Davis v. Merrill*, 51 M. 480; *Minor v. Bewick*, 55 M. 401.

87. The assignee of a mortgage cannot at law sue in his own name upon the negotiable notes securing it, unless they are indorsed to him: *Pease v. Warren*, 29 M. 9.

88. An assignee of the guaranty of a note can sue thereon in his own name: *Waldron v. Harring*, 28 M. 493.

89. A note payable to order and indorsed by the payee, with a guaranty either of pay-

ment or of collection, may be sued by the indorsee: *Green v. Burrows*, 47 M. 70; *Russell v. Klink*, 53 M. 161.

90. Where the party to whose order a note is payable indorses a guaranty thereon, such indorsement need not be negotiable to enable the indorsee to sue the maker: *Phelps v. Church*, 65 M. 281.

91. Where a railroad company which has accepted a voluntary subscription in aid of its proposed line assigns its property and franchises, including such subscription, the assignee company, having built the road in accordance with the agreement, may sue thereon: *Michigan M. & C. R. Co. v. Bacon*, 38 M. 466.

92. Under our statute authorizing suits by assignees of rights in action, the general doctrine is that of causes of action for torts only such as survive to the personal representatives of the injured party can be sued for by an assignee: *Final v. Backus*, 18 M. 218.

93. Assignees need not sue in the names of their assignors, nor is it necessary to bring an action in the name of one person for the use and benefit of another, even in cases where the right of action for a tort is assignable: *Watson v. Watson*, 49 M. 540.

94. A right of action for the wrongful cutting of timber on the assignor's land is enforceable in the assignee's name: *Final v. Backus*, 18 M. 218; *Grant v. Smith*, 26 M. 201; *Upham v. Dickinson*, 38 M. 338.

95. A cause of action for deceit cannot be sued by the assignee thereof: *Dayton v. Fargo*, 45 M. 153.

96. One who has joined in unlawfully cutting another's timber cannot take from him an assignment of his right of action and sue his co-trespassers thereon: *Upham v. Dickinson*, 38 M. 338.

97. A plaintiff in trover for conversion described himself as "assignee," and the court ruled that he could not recover on proof of a conversion subsequent to the assignment, as the declaration purported to be for a cause of action that had accrued before. *Held* error; the term "assignee" is here treated as simply descriptive: *Bloom v. Sexton*, 33 M. 181.

(b) Joinder of plaintiffs.

See EQUITY, IV, (b), 2.

98. An action for the joint use and benefit of two or more persons should not be brought where their interests are several: *Probate Judge v. Abbott*, 50 M. 479.

99. One of two joint parties to a contract cannot sue alone thereon: *Coe v. Wager*, 43 M. 49.

100. Where an insurance policy is taken out by a widow upon her property and that of her minor children, all the persons insured must join in suit thereon, unless some have assigned to others: *Monaghan v. Agricultural F. Ins. Co.*, 53 M. 289.

101. Plaintiff agreed to sell defendant a certain piece of land, and to cause it to be conveyed within ten days by deed executed by himself and others. Plaintiff was to have the right to quarry stone on the land for a certain time. In an action brought by him for the refusal of defendant to allow him to take away the stone quarried, *held*, that there was no presumption that the other co-grantors were jointly interested in the stone so as to be necessary parties to the suit: *Clemens v. Conrad*, 19 M. 170.

102. Wool belonging to different persons in severalty was sold at a uniform price per pound to a vendee knowing the ownership, by one of the owners acting also as agent for the others. *Held*, that an action for the ratable share of the price belonging to an owner was properly brought by him solely, and that all the owners should not join in one action: *Burhans v. Corey*, 17 M. 232.

103. A joint owner of a cause of action cannot introduce a new joint owner into the contract by individual assignment: *Learned v. Ayres*, 41 M. 677.

104. Where a contract describes the parties on one side as principal and sureties and stipulates that the principal shall perform the obligations and receive the pay while the sureties shall only be liable for liquidated damages on his default, it is, in effect, a severable contract, and the principal sureties need not be joined as plaintiffs in a suit upon it: *Widner v. Western Union Tel. Co.*, 47 M. 612.

105. A declaration on a contract is not demurrable for the non-joinder of plaintiff's sureties where the latter have no such interest in it as would entitle them to receipt for money due on it to their principal, and are only bound to pay certain liquidated damages on his default: *Ibid*.

106. In an action of trespass by tenants in common, in relation to their land, or in any action merely personal, they must all join as plaintiffs: *Draper v. Williams*, 2 M. 536.

107. In an action for injury to an easement a person who owns a portion of the land to which it is appurtenant must be joined as plaintiff: *Day v. Walden*, 46 M. 575.

108. In an action for the use and occupation of premises for a right of way, other persons who also have a right of way are not necessary parties where the right was in

neither case exclusive: *Ledyard v. Morey*, 54 M. 77.

109. The overseers of two adjoining road districts cannot join as plaintiffs in an action for an injury to a bridge partly in each district, nor, on their refusal to sue, can the highway commissioners of the township bring a joint action: *Port Huron Highway Commissioners v. Stockman*, 5 M. 528.

110. Where two or more sureties pay the debt out of a joint fund, they may join as plaintiffs in an action against their co-surety for contribution: *Smith v. Rumsey*, 83 M. 183.

111. One partner cannot sue alone in trespass for his proportion of damages done to partnership business: *Bigelow v. Reynolds*, 68 M. 344.

112. One partner may bring replevin for partnership property seized on execution for another's individual debt to the execution creditor: *Hutchinson v. Dubois*, 45 M. 143.

113. A partner suing for his exemption out of firm property need not join his co-partners as plaintiffs: *McCoy v. Brennan*, 61 M. 382.

114. The unlawful levy of an attachment against one member of a firm on specific chattels of the firm is injurious to both partners, and they may sue for such injury jointly and recover a joint judgment if the injury is tangible and the property disturbed or destroyed: *Haynes v. Knowles*, 86 M. 408.

115. Surviving partners can sue in their own names without joining decedent's representatives for the price of firm goods sold by them: *Bassett v. Miller*, 89 M. 133.

116. A surviving partner has the sole right of action for a trespass on the firm's property: *Pfeffer v. Steiner*, 27 M. 587.

117. No joinder of husband and wife is necessary where the wife sues for a personal grievance or cause of action: *Berger v. Jacobs*, 21 M. 215; *Leonard v. Pope*, 27 M. 145.

118. Under H. S. § 6297, a wife can maintain an action in her individual name without joining her husband for an assault committed upon her. Damages for such injuries, when recovered, will become her individual property, which she can release before judgment or appropriate afterwards. For the injury sustained by the husband, for loss of service, etc., he can maintain an action in his own name: *Berger v. Jacobs*, 21 M. 215.

119. A married woman may bring a sole action for slander: *Leonard v. Pope*, 27 M. 145.

120. Where one has engaged in his own name to furnish his own services and those of his wife, she need not be joined as plaintiff on

the contract, but he may sue alone: *Sines v. Wayne Poor Superintendents*, 58 M. 503.

121. Under H. S. § 6297, an action for the personal sufferings of a married woman from an injury received in a railroad accident should be brought by the wife alone, and not by the husband and wife jointly; the statute supersedes the common law in this respect. Whether, where they have sued jointly, the error may be cured by amendment, *quere*: *M. C. R. Co. v. Coleman*, 28 M. 440.

122. A wife may sue alone or husband and wife may join in suit for exempt property: *Shepard v. Cross*, 83 M. 96; *Hanselman v. Kegel*, 60 M. 540.

123. In a suit brought in 1854, by the husband alone for personal property acquired by the wife before her marriage, held, that the wife should have been joined: *Brown v. Field*, 4 M. 322.

That married woman could sue in her own name on liquor-bond, see INTOXICATING LIQUORS, § 39.

124. Minor children may be joined as plaintiffs, but are not necessary, in ejectment brought by their mother to recover a homestead: *Showers v. Robinson*, 43 M. 502.

III. DEFENDANTS.

(a) *Who proper and who necessary parties defendant.*

See EQUITY, IV, (c).

As to proper or necessary defendants in EJECTMENT, see that title, §§ 62-83.

125. An undisclosed agent may be sued for money paid to him without consideration, though he has paid it over to his principal: *Smith v. Kelly*, 43 M. 390.

126. An act wrongfully done by the joint agency or co-operation of several persons, or done contemporaneously by them without concert, renders them liable either jointly or severally: *Cuddy v. Horn*, 46 M. 596.

127. An agent, when liable for a fraud committed in a principal's behalf, may as well be sued separately as any joint wrong-doer sued alone in an action of tort: *Weber v. Weber*, 47 M. 569.

128. Under H. S. §§ 7714, 8959, the husband is no longer responsible, in person or property, for the torts of his wife, so that there seems to be no reason for joining him as a defendant; yet it is assumed, in these very statutes, that he is still a proper party, and whether necessary or not, he is not an improper party: *Burt v. McBain*, 29 M. 260.

129. A married woman, in suing a firm in which her husband is a partner, must implead him as defendant, if the partners are not severally liable, in order to maintain her action: *Benson v. Morgan*, 50 M. 77.

130. The statutory action of *assumpsit* for breaking a log-jam lies, if at all, against the owner of the logs and not against those whom he has hired to run them; it is the owner's duty to see that they do not obstruct the water-course: *Butterfield v. Gilchrist*, 53 M. 22.

131. A tenant for life who has parted with all his estate, and is out of possession, cannot be sued for waste committed by his assignee: *Beers v. Beers*, 21 M. 464.

132. An action for a labor debt under H. S. § 4110 cannot be maintained against stockholders without joining the corporation as a defendant: *Thompson v. Jewell*, 43 M. 240. See *Milroy v. Spurr Mountain Iron Mining Co.*, 43 M. 231.

133. Judgment creditors who take part in execution proceedings under a void judgment may be made defendants in trover for the value of the property: *Rolfe v. Dudley*, 58 M. 208.

As to necessary defendants in condemnation proceedings, see CITIES AND VILLAGES, §§ 325-327; RAILROADS, III, (c), 3.

(b) Joinder of defendants.

See EQUITY, IV, (c), 2.

134. An obligation, joint and several, may at law be sued against any or all of the obligors: *Dederick v. Barber*, 44 M. 19.

135. A member of a mutual aid society who sues it in *assumpsit* to recover back money paid cannot join two members having no joint functions with the society as receivers of the money: *Murphy v. Bidwell*, 52 M. 487.

136. Parties who are severally and not jointly liable each for a portion of the purchase price of materials cannot be jointly sued for the whole: *Larkin v. Butterfield*, 29 M. 254.

137. An action cannot be maintained upon a joint debt against less than all the debtors: *Post v. Shafer*, 63 M. 85.

138. An action for goods sold and delivered under an express contract to two persons jointly must be brought against both: *Searles v. Reed*, 63 M. 485.

139. In an action upon an appeal bond jointly executed by husband and wife as principals, the wife must be joined as defendant: *Post v. Shafer*, 63 M. 85.

140. Individual stockholders cannot be

made joint defendants with their corporation in an action upon a labor debt brought by an assignee thereof (H. S. § 4886), though they may be in an action brought by the original creditors: *Connors v. Carp River Iron Co.*, 54 M. 168.

141. On a written agreement parties can only be sued in the manner in which they have made themselves liable: *Lee v. Bolles*, 20 M. 46.

142. A plaintiff who proceeds against two or more persons must show by his declaration that they are jointly liable: *Ibid*.

143. One who indorses on a note payable to order a guaranty of payment may be joined as a defendant in a suit on the note: *Green v. Burrows*, 47 M. 70.

144. *Assumpsit* was brought against certain persons jointly to recover back money which the plaintiff had deposited with one of them in reliance upon his false and fraudulent representations that he conducted a bank of which the others were directors. *Held*, that even though the others had allowed their names to be so used, the facts did not establish any joint liability against them and they were not estopped from denying it: *Bennett v. Dean*, 41 M. 472.

145. Parties who combine in a fraud can be sued jointly at law as well as in equity: *Bay City Bridge Co. v. Van Etten*, 36 M. 210.

146. It is not usually necessary to sue wrong-doers jointly in tort; and an agent may as well be sued separately as any other joint wrong-doer: *Weber v. Weber*, 47 M. 569.

147. One who is injured by the wrongful or negligent action of several persons can sue them jointly or severally as he pleases: *Patterson v. Wabash, St. L. & P. R. Co.*, 54 M. 91.

148. A passenger upon one vessel injured by its collision with another in consequence of the negligence of the officers of both may sue them jointly: *Cuddy v. Horn*, 46 M. 596.

149. A wife who has knowingly perpetrated a fraud in her husband's behalf, and as his agent, need not be joined with him in an action of tort therefor: *Weber v. Weber*, 47 M. 569.

IV. MISJOINDER OR DEFECT OF PARTIES, HOW TAKEN ADVANTAGE OF.

See EQUITY, IV, (d).

150. Objection for non-joinder of plaintiffs should be made by plea in abatement, and cannot be raised for the first time on error: *Butterfield v. Gilchrist*, 53 M. 22.

151. The non-joinder of a co-tenant in com-

mon as plaintiff in an action for rent can only be set up in abatement, and, unless so pleaded, goes merely to apportion the damages: *Perrin v. Lepper*, 84 M. 292.

152. So in an action for trespass; and the damages will, on error, be presumed, in the absence of objection, to have been apportioned: *Achey v. Hull*, 7 M. 428.

153. Non-joinder of the wife in an action by the husband for property of the wife, held in her own name or that of another, need not be pleaded in abatement, but is ground of non-suit: *Brown v. Fifield*, 4 M. 822.

154. Non-joinder of a co-contractor as defendant, unless the declaration discloses a joint liability, can only be taken advantage of by plea in abatement: *People v. Dennis*, 4 M. 609; *Holdridge v. Farmers', etc. Bank*, 16 M. 66; *Bowen v. Culp*, 36 M. 224.

155. Non-joinder of one of two obligors on a bond should be pleaded in abatement: *Porter v. Leache*, 56 M. 40.

156. The objection of non-joinder to a declaration upon an award must be pleaded in abatement where the declaration does not show a joint liability: *Ballou v. Hill*, 25 M. 204.

157. Non-joinder of a defendant cannot usually be pleaded except in abatement, where there is no statute or other fixed rule requiring parties to be joined as a condition of the action: *Hinman v. Eakins*, 26 M. 80.

158. Where no plea in abatement for want of parties is filed to a declaration on the common counts for the price of merchandise sold to a third person, the defendant will be held liable if the purchaser is shown to be either his agent or his partner: *Campbell v. Sherman*, 49 M. 584.

159. In a suit against a partner to recover a penalty for unlicensed sale of spirituous liquor by his firm, the objection of non-joinder of the other partner is not good, but if good must be made by plea in abatement: *Smith v. Adrian*, 1 M. 495.

160. Failure to plead in abatement for non-joinder does not enlarge the personal right of recovery of the party bringing suit: *Ives v. Williams*, 53 M. 636.

161. Non-joinder of proper co-defendants must be taken advantage of by plea in abatement and does not continue open to objection till the submission of the case: *Mitchell v. Chambers*, 43 M. 150.

162. Where the attorney for joint defendants has stipulated for a discontinuance as to some of them, the others, having practically acquiesced, cannot urge the non-joinder in bar of further proceedings: *Callam v. Barnes*, 44 M. 598.

163. The right of pleading in abatement the non-joinder of a co-defendant is an absolute and valuable one, and a defendant who has suffered default in an action on a joint contract cannot be deprived of it *ex parte*: *Munn v. Haynes*, 46 M. 140.

V. TRANSFERS PENDING SUIT; BRINGING IN NEW PARTIES; SUBSTITUTION OF PARTIES.

See EQUITY, IV, (e).

164. Where, pending action upon a demand resting upon an implied *assumpsit* or an express contract, such demand is assigned, the suit may go on in the assignor's name: *Peters v. Gallagher*, 87 M. 407; *Moon v. Harder*, 38 M. 566.

165. The sale of negotiable paper pending suit thereon does not abate the suit or affect the issue: *Newberry v. Trowbridge*, 18 M. 263; *Toledo & A. A. R. Co. v. Johnson*, 55 M. 456.

As to transfers by plaintiff pending ejectment, see EJECTMENT, §§ 99, 100, 193, 194.

As to effect of transfer by complainant in chancery, see EQUITY, §§ 992-995, 999.

166. A new party cannot be brought in by amending the declaration; but misnomer of a plaintiff which occurred through clerical mistake may be corrected: *Final v. Backus*, 18 M. 218.

Further as to amendments as to names of parties, see PLEADINGS, §§ 589-600.

167. A city attorney cannot bring the corporation into court by filing a brief in a case in which the city is not impleaded: *People v. Hatch*, 60 M. 229.

168. A change of parties to the record in the principal case does not defeat garnishment process, if at the date of service the claim was garnishable, and if plaintiff in the principal case has recovered judgment: *Bethel v. Superior Court Judge*, 57 M. 379.

169. Part owners of a vessel are entitled to intervene in proceedings *in rem* against her: *Mitchell v. Chambers*, 43 M. 150.

As to notice to covenantor or warrantor to defend suit, and as to effect of judgment where he has been notified or has assumed defence, see CONVEYANCES, §§ 356-360; JUDGMENTS, §§ 218-217.

170. On the death of a defendant in ejectment the action may be carried on against surviving defendants, and the personal representatives or heirs of the deceased defendant cannot be brought in: *Hoffman v. St. Clair Circuit Judge*, 40 M. 351; *Hoffman v. Harrington*, 41 M. 223.

171. Upon the death of one defendant the cause of action, originally joint, survives against his co-defendant alone, and his administrator cannot be joined; and upon the death of the co-defendant the cause of action survives only against the latter's executors: *Newberry v. Trowbridge*, 18 M. 263.

172. Where a garnishee dies before disclosure made or default taken, his administrator cannot be brought in: *White v. Ledyard*, 48 M. 264.

173. The suggestion of plaintiff's death is not issuable: *Larned v. Wilcox*, 4 M. 333.

174. And notice need not be given to defendant. The proceedings for revivor after plaintiff's death are statutory and *ex parte*; but proof should be filed of the death and of the administrator's appointment: *Vickery v. Beir*, 16 M. 50.

175. Omission to revive suit before taking out an execution after plaintiff's death may be cured by an order *nunc pro tunc*: *Jenness v. Lapeer Circuit Judge*, 42 M. 469.

176. Where plaintiff died after a referee had found in his favor, and judgment was rendered on the finding without reviving the cause, the supreme court, on affirming the judgment, remanded it for revivor: *Botsford v. Sweet*, 49 M. 120.

177. Where the cause of action survives, the fact of a plaintiff's death cannot enter into the merits, and evidence thereof may be excluded on the trial: *Mason v. Finch*, 28 M. 282.

178. Where a party's death has been suggested upon the record and is undisputed, the proceedings will be construed therewith without amending the declaration, but subsequent proceedings must be properly entitled: *Stimpson v. Seventh Circuit Judge*, 41 M. 3.

179. Where, after death of a joint defendant, suit was discontinued as to him, and judgment was rendered against the other defendant, who, in suing out a writ of error, entitled the case as if deceased were still a party, *held*, that the irregularity might be disregarded: *Campau v. Brown*, 48 M. 145.

As to substitution of new parties in chancery after death or assignment, see EQUITY, VII.

Discontinuance as to one or more parties, see ACTIONS, §§ 180-148; INFANTS, §§ 85-87.

VI. PERSONS UNDER DISABILITY.

See EQUITY, IV, (f).

180. In a suit under an infant's partnership contract upon a completed cause of action for the infant's benefit, he should be a plaintiff

in his own name and not through another: *Osburn v. Farr*, 42 M. 184.

181. Where an infant and an adult are joint parties to a contract, the infant's father cannot sue as his substitute: *Ibid*.

182. An action of replevin brought by a father in his own name cannot proceed on the theory that he is suing in his child's behalf as guardian or next friend: *Ash v. Mathes*, 52 M. 615.

183. An infant partner cannot individually sue to recover a debt or property due the firm: *Bethel v. Superior Court Judge*, 57 M. 379.

184. Minor children are not necessary parties to an action of ejectment brought by a widow, their mother, to recover the homestead, though it is proper to join them: *Showers v. Robinson*, 48 M. 503.

As to appointment of next friend for infant plaintiffs, see INFANTS, §§ 88-94.

185. An insane person under guardianship continues liable to suit: *Ingersoll v. Harrison*, 48 M. 234.

PARTITION.

I. GENERAL PRINCIPLES.

II. PROCEEDINGS FOR PARTITION.

- (a) *Jurisdiction.*
- (b) *Parties.*
- (c) *Pleadings.*
- (d) *Practice; decrees.*

I. GENERAL PRINCIPLES.

1. H. S. § 7850, which provides that joint tenants or tenants in common may have partition, does not prevent parties holding lands jointly, or in common, from making such agreements as may modify or limit their rights to partition: *Avery v. Paine*, 12 M. 540.

2. The rule that a tenant in common of lands may have partition is not of universal application. A party may enter into such agreements with his co-tenant as to estop him from enforcing the right of partition: *Eberts v. Fisher*, 54 M. 294.

3. Where the owner of lands conveyed an undivided moiety to another, for a sum of money which was less than its value, to be paid from the proceeds of sales to be made of the lands, and which was secured by mortgage on the lands, and a part of the consideration consisted in the services of the purchaser in taking charge of and selling the joint property under a contract between them, and a principal part of the seller's security for the purchase price, and for the efficiency and fidelity of the purchaser in the management

and sale of the property, consisted in the control he would have over the sales of the purchaser's interest, it was *held* that so long as the seller was not guilty of refusal to perform his part of the contract, or of any default which would relieve the purchaser from the obligation to perform, or prevent his performance, the latter was not entitled to partition: *Avery v. Payne*, 12 M. 540.

4. Mortgages executed by the seller on his own undivided half, not alleged or shown to have interfered with sales, or otherwise to have operated to the prejudice of the purchaser, will constitute no reason for partition: *Ibid.*

5. Where the interest of one of several heirs in certain city lots, constituting a portion of an inheritance, has been sold on execution, the fact that upon a voluntary partition among the heirs, to which the execution purchasers were not made parties, said city lots were set off to others of the heirs than him whose interest has been so sold, cannot prejudice the rights of such purchasers: *Butler v. Roys*, 25 M. 53.

6. Whether a partition among tenants in common, to which an execution purchaser of the undivided interest of one of them was not made a party, can affect such purchaser's rights, *quere*: *Whiting v. Butler*, 29 M. 122.

7. Upon a voluntary partition of lands any liens on the undivided interest of either tenant in common will be transferred, as between the parties thereto, to such portion of the premises as is set off to the tenant or the assignee of the tenant against whom the lien stood; and that portion will constitute the primary security for the lien: *Webb v. Rowe*, 35 M. 58.

8. If parol evidence is admissible at all to show that the obligation to pay off a mortgage given by one tenant in common had been assumed by the other on making partition, it must be very conclusive when there is no other consideration than the partition: *Ibid.*

9. Where an inheritance consists of separate city lots which have been platted, each lot is presumed, in the absence of any showing to the contrary, to be a separate holding: *Butler v. Roys*, 25 M. 53.

10. When partition proceedings are directed against several distinct parcels of land, each is subject to partition by itself: *Walsh v. Varney*, 38 M. 73.

11. Partition in the probate court of lands devised by a will dividing real estate among heirs does not change the nature of the title to each share: *Haddon v. Hemingway*, 39 M. 615.

12. The possession of a tenant in common of any specific portion of the entire tract owned in common is subject to the incidents of partition: *Tharp v. Allen*, 46 M. 389.

13. Partition may be made by consent; but it is not an incident to a suit for a partnership accounting in which the partners usually have a right to have the assets disposed of. If land belonging to the firm is not disposed of, it must be left as a distinct tenancy in common so that the tenants may have it partitioned in a separate suit: *Godfrey v. White*, 43 M. 171.

14. In adopting, in 1846, the New York statute of partition, the legislature may be presumed to have adopted the construction thereof as settled in that state: *Greiner v. Klein*, 28 M. 12.

II. PROCEEDINGS FOR PARTITION.

As to costs of partition proceedings, see COSTS, § 187.

(a) Jurisdiction.

15. The register of probate had authority in 1817, under the act of January 9, 1811, to make partition of real estate among tenants in common; and the remedy for an heir whose interest was injured was by appeal under the statute: *Willets v. Mandlebaum*, 28 M. 521.

16. Equity has jurisdiction to make partition between joint owners of lands, notwithstanding a remedy is given by statute: *Thayer v. Lane*, H. 247.

17. Partition is a local proceeding, and can only be enforced in a court which has jurisdiction of the territory where the land is: *Godfrey v. White*, 43 M. 172.

18. Courts of equity have exclusive jurisdiction of suits for the partition of personal property: *Godfrey v. White*, 60 M. 443.

19. Partition in the probate court is confined to such lands as have been assigned to the heirs or devisees after the payment of debts, etc.; but there is no such restriction in equity: *Campau v. Campau*, 19 M. 116.

20. Although an assignment of the residue of an intestate's estate to the person entitled after administration is a prerequisite to a partition of the lands in the probate court, a slight showing that such an assignment has been made will support a finding to that effect where it appears that the probate court has proceeded to partition the lands among the heirs: *Dickison b. Reynolds*, 48 M. 158.

21. "An estate in possession" within the meaning of the statute for partition (H. S. § 7852) means merely an estate in present en-

joyment: *Campau v. Campau*, 19 M. 116; *Eberts v. Fisher*, 44 M. 551.

22. Heirs may have partition among themselves although the estate has not been settled. Notwithstanding the right of the administrator to take possession for the purpose of collecting rents, etc., their heirs have such an estate in possession as will enable them to maintain a suit in equity for partition: *Campau v. Campau*, 19 M. 116.

23. Property exempt as a homestead is nevertheless subject to partition as between the heirs-at-law or their assignees: *Robinson v. Baker*, 47 M. 619; *Patterson v. Patterson*, 49 M. 176.

24. H. S. § 5933 does not forbid partition being made before a dower interest expires, but merely provides for making partition afterwards: *Persinger v. Jubb*, 52 M. 304.

25. The estate which husband and wife take under a deed to them as such is not subject to partition proceedings: *Jacobs v. Miller*, 50 M. 119.

26. Where a tenant in common of land in partition is also a lessee of the land, it saves circuity of action to consider all of his claims together; but the jurisdiction does not depend on so doing: *Eberts v. Fisher*, 44 M. 551.

27. The special province of a bill for partition is to sever the joint possession, and not to try legal titles: *Hoffman v. Beard*, 22 M. 59.

28. The complainant must have an actual or constructive possession to entitle him to partition, where the title is a legal one: *Hoffman v. Beard*, 22 M. 59; *Hemingway v. Griswold*, 22 M. 77.

29. If the possession of lands of which partition is sought be vacant, it follows the title: *Hoffman v. Beard*, 22 M. 59.

30. The possession of other co-tenants, not holding adversely, inures to the benefit of a co-tenant seeking partition: *Ibid.*

31. If the title, though of a legal character, be undisputed, or, perhaps, though denied, if it appear to be so clear and incontestable as not to admit of a legal doubt, the bill will be maintained, as it will be where the title is an equitable one, or partly equitable and partly legal: *Ibid.*

32. A bill in equity for a partition was properly dismissed, where the whole title was purely legal and there was no obstacle to a trial in ejectment, and where, since the bill had been pending, there had been two trials in ejectment, in both of which the verdict had been against the complainant's title: *Hemingway v. Griswold*, 22 M. 77.

33. Where the case made by the bill contemplates as chief and eventual relief a sever-

ance of holdings, and where a decision as to whether, in any eventuality, there should be partition, depends upon the solution of questions, some of which are distinctly appropriate to equity, the circumstance that other questions in the case, if standing by themselves, might be regularly contested and settled in ejectment, is not enough to oust the jurisdiction of chancery: *Wallace v. Harris*, 32 M. 390.

34. On a bill filed for the foreclosure of a mortgage partition of the premises cannot be decreed though the proofs show it would be equitable: *Payne v. Avery*, 21 M. 524.

35. If the necessary facts are alleged and proved, and all the parties to be affected are before the court, partition between tenants in common may be decreed upon a bill filed to restore a destroyed deed of an undivided interest: *Wallace v. Wallace*, 68 M. 326.

36. The jurisdiction of courts of chancery over proceedings in partition as to non-residents is special and limited, and dependent entirely upon the statute. All the necessary facts to confer jurisdiction must therefore affirmatively appear upon the record: *Platt v. Stewart*, 10 M. 260.

37. No jurisdiction is acquired over non-resident defendants not appearing, where no affidavit of non-residence is filed, and without such affidavit an order of publication is void. The recital of an affidavit in the order is not evidence that one was made: *Ibid.*

(b) Parties.

38. The executors and devisees of a deceased tenant in common, not asking partition among themselves, may jointly file a bill to have their interests set off from that of the co-tenant: *Page v. Webster*, 8 M. 263.

39. Under the statute of partition a wife whose husband is seized of an interest in the lands to be divided may be made a party, and if she is not, her inchoate right of dower will not be affected. The court of chancery has power in partition proceedings to guard this inchoate right of dower, where the wife is made a party, without departing from its principles: *Greiner v. Klein*, 28 M. 12.

40. To a bill for partition brought by heirs of a deceased tenant in common, their mother, as entitled to dower in such tenant's estate, is a proper, and, it seems, a necessary party: *Campau v. Campau*, 19 M. 116.

41. Whether a purchaser from one of several tenants in common of an undivided interest in a part only of the property held in common acquires such a title as to make him a

necessary party in a suit brought for partition by other tenants in common, *quere: Ibid.*

42. The holder of an inchoate lien for paying taxes, in the shape of a redeemable lease, need not, under H. S. § 7858, be made a party defendant to a bill for the partition of the property; it is proper, however, to make him so, and in case of non-redemption the lien may be made chargeable on the defendants, as the final form of relief may make suitable: *Eberts v. Fisher*, 44 M. 551.

43. A partition bill that discloses that persons not made parties have like interests with those set up by the complainant is demurrable for want of parties: *Taylor v. King*, 82 M. 42.

(c) *Pleadings.*

44. A bill for partition by executors and devisees set forth that the undivided interest was devised to the latter in common, with the power, nevertheless, in the executor to sell and dispose of the same. *Held*, a sufficient statement of the respective interests of complainants, they asking no partition as between themselves: *Page v. Webster*, 8 Mich. 263.

45. A bill for partition averred that the land was devised to eleven heirs who were named; that seven had assigned to defendant, who holds seven-elevenths of the property, and that complainants, who represent four of the heirs, claim the rest. *Held*, that it sufficiently averred defendant's interest and would be good for a union of four-elevenths in complainants, if it did not, indeed, show that each held one-eleventh: *Eberts v. Fisher*, 44 M. 551.

46. Allegations in a bill for partition, as to the rights and obligations of tenants of the defendant, could only be a ground of demurrer by the tenants themselves; and being only collateral to the regular issues in partition, there is no legal objection to averring or establishing any facts that would determine the relative interests of all parties. Any facts bearing upon the termination of the lease by forfeiture or otherwise are pertinent, as the object of the bill is not properly to enforce a forfeiture, but to determine the right to a partition and the extent of the property to be partitioned: *Ibid.*

47. A bill for partition showing that defendant is tenant in common with complainant, and that the latter also holds a mortgage on the former's interest, makes out a good case for partition, which cannot be affected by any further needless allegations of grievances if they are not inconsistent with the title set up: *Hoffman v. Ross*, 25 M. 175.

48. Allegations concerning receipt of rents

and profits by defendant are not repugnant, and may, under some circumstances, become relevant upon the settlement of partition proceedings: *Ibid.*

49. Where defendants in partition desire to rely on a lease made by them they must include such averments in their answers as will enable them to maintain their interests, so that, whether the land is partitioned or sold, equities may be adjusted in it or in its proceeds: *Eberts v. Fisher*, 44 M. 551.

50. Where a bill for partition is held to make out no case for relief the supreme court will not consider questions of title involved in it: *Walsh v. Varney*, 86 M. 73.

51. Petition for partition filed by an administratrix is amendable so as to show that she had a dower interest and is guardian for minor heirs: *Persinger v. Jubb*, 52 M. 304.

(d) *Practice; decree.*

As to sufficiency of notice *lis pendens* in partition, see NOTICE, § 90.

52. Notice to defendants of meeting of commissioners is essential to the validity of their action: *Simpson v. Simpson*, 59 M. 71.

53. Want of venue to an affidavit of service of notice to the parties concerned in partition proceedings is not a fatal defect if the venue is indorsed on the notice and the affidavit is properly entitled and sworn to: *Persinger v. Jubb*, 52 M. 304.

54. Parties interested in partition proceedings may properly be heard by the commissioners, on notice to all concerned to appear before them at a specified time and place to prove, if they wish, the value of the lands: *McLaughlin v. Wayne Circuit Judge*, 57 M. 85.

55. Commissioners in partition proceedings must apply to the court for any instructions they may need: and if interested parties take part in their deliberations or in the preparation of their report, the report will be set aside: *Ibid.*

56. It is not necessary that all the commissioners should sign or acknowledge the report, but their deliberations should be had together, and they must all meet when their final action is taken and the report is made and signed: *Simpson v. Simpson*, 59 M. 71.

57. A party to a partition is not at fault for assuming that the commissioners appointed to make it have acted impartially: *Adair v. Cummin*, 48 M. 375.

58. Where commissioners appointed to make partition divided the land equally, but so that one share was worth twice and a half

as much as the other, and contained 200 acres of upland with 174 under cultivation and 30 acres of lowland and about 20 of swamp, while the other consisted of 60 acres upland with 9 acres cleared and about 180 acres of marsh and swamp, it was *held* that the inequality was so great as to amount to fraud, and the partition, though confirmed, might be set aside: *Ibid.*

59. Where an award of partition is so extravagantly one-sided as to shock the conscience and there is no pretence of justification, it must be *held* fraudulent in law whatever the purpose of the commissioners may have been in making it: *Ibid.*

60. The good faith of commissioners in making partition is a question that may be determined by circumstances; the evidence of legal fraud need not be specific: *Ibid.*

61. Where partition of lands in which an infant has an interest is prayed for, the facts must be inquired into as fully when the infant is complainant as when he is defendant: *Claxton v. Claxton*, 56 M. 557.

62. An infant's guardian filed a bill in his behalf for the partition of land in which he had an interest. Stipulated facts indicated that it would not be for his advantage, and on appeal it was *held* that as it could not be presumed a more favorable showing could be made by proof the decree should be reversed and the bill dismissed: *Ibid.*

63. The accounting for rents and profits is one of the important incidents of a partition in equity: *Hoffman v. Ross*, 25 M. 175.

64. It is only when a partnership relation exists between the parties as to the property sought to be partitioned, or there is some agreement, express or implied, between them, that an accounting shall be had before a division of the property can be made, that such accounting is a prerequisite to a suit for partition: *Godfrey v. White*, 60 M. 443.

65. Improvements will not be taken into account in a partition suit where, by reason of joint occupation, and the voluntary commingling of accounts for improvements, advances and services, it is impossible to ascertain the relative cost and value of what has been done by each: *Campbell v. Campbell*, 21 M. 438.

66. Whether a widow who for many years has carried on the farm which belonged to her deceased husband, and has brought up a family of children, during which time she has paid off a mortgage on the farm and has cancelled the notes, but afterwards has taken an assignment of it to herself, is strictly entitled to hold a lien on the land for the amount paid

by her, *quere*. But when one of the children, after having arrived at maturity, files a bill for a partition of the premises, equity requires that, as between the widow and the complainant in partition, she should be compensated for her advances to pay off the mortgage; and that she should be allowed interest on the sums she has paid, except as to the proportion which her dower right should bear (as to that proportion, see INTEREST, § 45): *Ibid.*

67. Partition will be decreed according to the equitable rights of parties. But to enable the court to make such decree, their equitable rights should appear from the pleadings: *Thayer v. Lane*, W. 200.

68. Where a part of the heirs have attempted a voluntary partition among themselves, the court, on a bill filed by another, may respect this voluntary partition so far as it does not prejudice the right of complainant: *Ibid.*

69. In making partition between heirs at law or their assignees, where there is a homestead and also other lands, if there is a widow with a right of dower, she should have her dower and homestead right saved to her in the homestead land whenever it can be done consistently with justice: *Robinson v. Baker*, 47 M. 619.

70. When one of several heirs files a bill for partition of land in which his mother is entitled to dower, and the other heirs disclaim any rights in the land during the life of the mother, it is erroneous, after decreeing the setting off of complainant's interest, to go further and make partition among the mother and the other heirs: *Campbell v. Campbell*, 21 M. 438.

71. The fact that a partition suit is revived as against the administrators of an estate for purposes of an accounting merely does not affect the rights of the heirs at law in the subsequent partition of the inheritance over which the administrators would have no control: *De Mill v. Port Huron Dry Dock Co.*, 30 M. 33.

72. A decree of partition cannot be opened to change results without also setting aside the titles obtained under it: *Walsh v. Varney*, 38 M. 73.

73. Where the grantees of partitioners hold separate and undivided interests and the partition proceedings were not defective as to the parties, they cannot have the proceedings revived for the purpose of barring of their rights persons who had not been made parties, so as to prevent them from asserting their legal rights by bringing ejectment: *Ibid.*

As to conclusiveness of decree, see ESTATES OF DECEDENTS, § 400.

PARTNERSHIP.

- I. WHAT CONSTITUTES; WHO DEEMED PARTNERS; PROOF OF PARTNERSHIP.
- II. AUTHORITY OF PARTNER; HOW FAR MAY BIND FIRM.
- III. RIGHTS AND REMEDIES AS BETWEEN A FIRM OR PARTNERS AND THIRD PERSONS.
- IV. RIGHTS, LIABILITIES AND REMEDIES AS BETWEEN PARTNERS; ACCOUNTING.
 - (a) *In general.*
 - (b) *Proceedings at law between partners.*
 - (c) *Accounting in chancery.*
- V. DISSOLUTION AND ITS EFFECTS.
 - (a) *What works dissolution; notice.*
 - (b) *Powers and liabilities of partners after dissolution.*
 - (c) *Settlement by surviving partners.*

I. WHAT CONSTITUTES; WHO DEEMED PARTNERS; PROOF OF PARTNERSHIP.

1. Partnership involves community of interest in some lawful commerce or business for the conduct of which the parties are mutually agents for each other, but with general powers within the scope of the business, which powers they can restrict by agreement to the extent of making one the sole agent of the rest and of the business: *Beecher v. Bush*, 45 M. 188.

2. A partnership must contain more than one person: *Stirling v. Heintzman*, 42 M. 449.

3. The test of partnership, as between the parties themselves, is their intent: *Beecher v. Bush*, 45 M. 188.

4. Whether persons are partners *inter se* is to be determined by the understanding and intention of the parties as between themselves; and they cannot be made such without the assent of every member, and his actual intention to become a member: *Gray v. Gibson*, 6 M. 300.

5. Where the question of partnership arises, not with third persons, but between the parties themselves, the agreement out of which the supposed partnership arises is to be construed as any other instrument between the same parties: *Bird v. Hamilton*, W. 361.

6. While copartnership articles cannot be controverted or varied by the parties thereto, third parties may show who are the real partners and owners of the business: *Bishop v. Austin*, 66 M. 515.

7. An agreement to enter into a partnership

will not be specifically enforced if it is silent as to the time for which the partnership is to continue: *Buck v. Smith*, 29 M. 166.

8. A partnership agreement which contemplates action to be taken at once and continuously for the joint benefit creates a present partnership, and not merely one that is to begin in the future: *Kerrick v. Stevens*, 55 M. 167.

9. Where a party had failed to perform the preliminary conditions, upon a compliance with which a copartnership was to be formed, and the other party to the agreement, to enable him to perform, furnished his own capital, and for a short time carried on the business in the name of the proposed firm, it was held that this was no waiver, and could not entitle the defaulting party to the rights of a partner: *Bird v. Hamilton*, W. 361.

10. Articles of partnership purporting to be between the complainant on the one part, and the defendant and a minor brother on the other, but which were executed only by the two parties, held not to have made the minor brother a partner: *McGunn v. Hanlin*, 29 M. 476.

As to effect of infant's partnership agreement and ratification thereof, etc., see INFANTS, §§ 19, 37-39, 61, 62, 66, 67, 89-85.

11. Two persons arranged that one should furnish certain hay and the other transport it to a market to sell it; if the latter sold at not less than a given rate he was to receive a specified sum per ton and pay over the rest; if he sold at more than the minimum, the excess was to be equally divided; and if he failed to sell he was to store the hay for the other and wait till it should be sold for reimbursement for his freight charges; held, that this did not make the parties partners, and that in the absence of any authority to sell on credit, the one who received the hay was liable for all the hay he sold, and if he gave credit did so at his own risk: *Morrison v. Cole*, 30 M. 102.

12. Where one owning lands makes an arrangement with another to cut and run the cedar posts on the lands at his own expense on shares, the latter receiving half the posts and paying all the cutting expenses, these expenses cannot be regarded as partnership expenses, nor is the business such as to authorize any necessary inference of partnership: *St. Denis v. Saunders*, 36 M. 369.

13. Where persons associate themselves under articles, to purchase property and carry on a manufacturing business, and their organization is so defective as to come short of creating a corporation within the statute, they

become, in legal effect, partners, and their rights as members of the company, to the property acquired by the company, will be recognized and protected: *Whipple v. Parker*, 29 M. 369.

14. An association in which the conditions of membership are the payment of an entry fee and of *pro rata* assessments, but which does no business involving profit or loss, is not a partnership; and the members are not personally liable on contracts made by its officers: *Burt v. Lathrop*, 52 M. 106.

15. Where a body professing to be a corporation has been dealt with as such, one who has so dealt with it cannot question its corporate existence for the purpose of charging its members individually as if they were partners: *Merchants', etc. Bank v. Stone*, 38 M. 779.

16. For an unsuccessful attempt to uphold, on the basis of a partnership authority, notes issued in the corporate name by one of two sole stockholders of the company, who with his associate acted as president and treasurer, see *New York Iron Mine v. Negaunes Bank*, 39 M. 644.

17. When fraudulent associates assuming under an invalid statute to act as a corporation may be held as partners, see *Cook v. Wheeler*, H. 443; *Wheeler v. Clinton Canal Bank*, H. 449; *State v. How*, 1 M. 512.

18. An agreement which purports on its face to be a copartnership agreement and which provides that the parties thereto shall share equally in expenses, losses, and gains, cannot be treated as a mere contract of employment: *Smith v. Walker*, 57 M. 457.

19. An agreement between two persons to engage in the prosecution of a lawful continuing business, each to furnish a portion of the capital stock and to share in the profits and losses, constitutes them partners in such business: *Kingsbury v. Tharp*, 61 M. 216.

20. A. furnished timber, capital and all his time in the manufacture of shingles. He was to have interest and two-thirds of the net profits, and B. was to have one-third. *Held*, a partnership: *Wells v. Babcock*, 56 M. 276.

21. It seems that an agreement to carry on business and receive half the profits does not make one a partner: *Wilcox v. Matthews*, 44 M. 192.

22. An arrangement for sharing profits may be shown in proof of partnership, but is not conclusive evidence of it: *Thayer v. Augustine*, 55 M. 187.

23. Renting a saloon for half the profits of the business does not make the landlord a partner of the tenant: *Ibid*.

24. An arrangement by which one person is to share the profits of a business with another does not make him a general partner in any such sense as to deprive him of his right to certain additional specific compensation which has been agreed upon: *Hamper's Appeal*, 51 M. 71.

25. To constitute one a partner as to third persons he need not agree to share in the losses of the business; if he shares in the profits he thereby deprives creditors of part of the means of payment, and this is sufficient: *Sager v. Tupper*, 38 M. 258.

26. In an action against three persons for goods sold and delivered, in which it was sought to charge two of them as partners of the third, the trial court left the jury to determine, as matter of fact, whether by the understanding and agreement of all three the two were to share in the profits, and, if so, the jury were told they would be liable as partners. *Held* correct: *Hinman v. Littell*, 23 M. 484.

27. But merely sharing in profits, where third persons have not been legitimately led to believe there was a partnership, does not create one as to them, unless there was one in fact: *Beecher v. Bush*, 45 M. 188; *Cohell v. Britton*, 59 M. 350.

28. A joint and equal interest in an enterprise does not of itself make the holder a partner: *Edson v. Gates*, 44 M. 253.

29. A. agreed to buy a timber tract, cut and saw the timber, and ship it to B., who was to pay A. the cost of the timber and a certain price per thousand, sell it, and divide the net profits or losses with A. *Held*, that there was no partnership in unshipped lumber: *Monroe v. Greenhoe*, 54 M. 9.

30. A series of independent transactions wherein W. selects lands and B. supplies money and buys them, and they divide the profits on selling them again, do not in themselves establish a partnership. Nor would an accumulation of such purchases and the holding of the lands for suitable opportunities to sell or for lumbering: *Wells v. Babcock*, 56 M. 276.

31. H. made an agreement with E. whereby he was to look up desirable lands and bid them in at tax sales, E. furnishing the money to pay for them. Both were to control alike the subsequent disposition of the lands, and after E. had been repaid what he had advanced, they were to divide the profits equally. Their community of interest extended to both profit and loss. On a bill by H. to wind up the partnership, this arrangement was admitted by demurrer. *Held*, that it constituted a partner-

ship, if the parties stood to each other in the relation of principals and not of master and servant; and that the fact that the title to the lands was taken in E.'s name was immaterial: *Hunt v. Erikson*, 57 M. 330.

32. An agreement binding one party to get out lumber for the other during a specified season, the latter receiving a fixed proportion of the net profits of the job above expenses, does not constitute the parties partners, if at all, except for the season specified, even though the agreement was made some time before: *Hall v. Edson*, 40 M. 651.

33. Several part-owners of a vessel are not regarded as partners unless it distinctly appears that they are such: *Mitchell v. Chambers*, 43 M. 150.

34. The existence of a partnership, as between the parties, is a question of fact for a jury. And it is negatived by a verdict permitting recovery if there could be no recovery otherwise: *Densmore v. Mathews*, 58 M. 616.

35. Persons who have never agreed to become partners in a firm, who have never held themselves out as such, or contributed to its capital or shared in its profits, cannot be considered as partners; and the facts that they held a mortgage upon the firm property, and that one of them, whose son-in-law was a member of the firm, indorsed its paper, do not tend to prove that they were partners: *Hunt v. Oliver*, 118 U. S. 211.

36. Persons who are not partners may, nevertheless, be held liable as such for goods furnished them at the request of either, if they have held themselves out as partners, and the bills incurred by one have been acquiesced in by the other: *Kritzer v. Sweet*, 57 M. 617.

37. A partnership cannot be implied, as matter of law, from a business relation, if the parties thereto have not made or intended to make a partnership contract and if they have done nothing to estop them from denying the existence of a partnership: *Beecher v. Bush*, 45 M. 188.

38. An arrangement by which one man "hires the use" of another's building from day to day and opens and keeps it as a hotel, paying the owner daily a sum "equal to one-third of the gross receipts and gross earnings," does not of itself constitute them partners: *Ibid.*

39. One may become liable as a partner to third persons, though it was not his intention to become a partner, and even though a partnership could not have been made: *Cleveland Paper Co. v. Courier Co.*, 67 M. 152.

40. There can be no such thing as a part-

nership as to third persons when there is none as between the parties themselves, and third persons have not been misled by concealment of facts or by deceptive appearances: *Beecher v. Bush*, 45 M. 188.

41. When two persons authorize a third to hold himself out as a partner with them, and he does so accordingly, this is as much their holding themselves out as such partners as if the same representations had been made by them in person. See this case for charge as to the fact of partnership in the face of an understanding to the contrary: *Hinman v. Littell*, 28 M. 484.

42. A firm composed of two women put the husband of one in absolute charge of the business, and he thereafter made purchases on his own credit, and with his wife's knowledge and consent acted in all respects as if he, instead of his wife, was one of the partners. Held that, as to creditors who had no notice to the contrary, he was to be considered as a partner; that his statements to a creditor to that effect were admissible in defence to an action of trover for goods taken on attachment; and that, unless superior equities had arisen, a judgment against the firm concluded the other partner. Such equities could not arise from the purchase alone in favor of the partner whose responsibility did not appear: *Parshall v. Fisher*, 48 M. 529.

43. The testimony of those who had dealt with the firm, showing their understanding as to who composed it, and also the whole state of facts as to how the business was done, were admissible, as was also a conversation concerning the payment of a claim, carried on between the husband and the attorney of an attaching creditor, in the wife's absence, but in the presence of a transferee of the firm property, and before the latter had parted with any consideration: *Ibid.*

44. An agreement for the formation of a limited partnership, executed under the laws of another state, but not recorded so as to become effectual for the purpose designed, has no tendency to prove an actual general partnership between the persons named in it, in the absence of extrinsic evidence to show that they had actually entered into business as partners: *Gray v. Gibson*, 6 M. 300.

45. Where an attempt is made to hold A. responsible for the acts of B., claimed to be his partner, the partnership must be clearly shown: *Campbell v. Sherman*, 49 M. 534.

46. The unity of interests in plaintiffs claiming as copartners may be shown by circumstantial evidence: *Hadden v. Shortridge*, 27 M. 212.

47. In an action on an account stated, evidence that the defendants admitted that they were doing business as partners should be allowed to go to the jury, even if not specifically confined to the time within which the account accrued: *Sager v. Tupper*, 38 M. 258.

48. In an action in which it was sought to charge defendants as partners owning a mill, the plaintiff introduced evidence tending to show that one of them exercised authority about the mill. *Held*, that by way of rebutting the inference that he was interested as a copartner, it was proper to show that others gave like directions; but not to prove his statements disclaiming such interest: *Ibid*.

49. Partnership cannot be proved by general reputation: *Ibid*.

50. Evidence that an arrangement for carrying on business for a share of the profits was entered into under an advertisement for a partner is admissible as tending to show a partnership: *Wilcox v. Matthews*, 44 M. 192.

51. A lawyer proposed to a real estate agent that they should together buy land and subdivide it and that the agent should sell it. It was a question whether the agent should put in any money, and whether he should share profits or sell on commission. There was no common fund, and money was to be advanced as required for individual purchases. *Held*, that the evidence was too vague to prove a partnership and support a bill by the agent for an accounting as to a parcel of land purchased and taken in the name of a third person: *Pulford v. Morton*, 62 M. 25.

52. In an action to charge defendants as copartners with the indebtedness of a banking institution, it is error to hold the defendants estopped from showing that in fact they were not partners, by reason of their having silently allowed the proprietor of the bank to represent them in printed notices as directors; such representations could not reasonably have misled any one into believing defendants were partners, or into trusting the bank on that basis; the most any one could insist upon would be that he had a right to regard the representations as true, and, treating them as true, they do not suggest the existence of a partnership: *Bennett v. Dean*, 85 M. 306.

II. AUTHORITY OF PARTNER; HOW FAR MAY BIND FIRM.

53. As a general rule one partner cannot execute a specialty in the name of the firm, binding, as such, upon the firm: *Fox v. Norton*, 9 M. 207.

54. A bond was declared upon as the indi-

vidual bond of two defendants. The bond offered in evidence was signed by one with the name of a copartnership composed of the two, but there was no evidence that it was executed by the one in the presence of the other, or that the other had previously assented to its execution, or subsequently recognized or ratified it as the act or obligation of the firm. It was *held* that the action could not be maintained: *Ibid*.

55. An action upon the covenants of a lease which purports to have been given by a firm will not lie against the partners if, after having been left with the lessees' attorney to be held until an absent partner has approved of it, such approval is not given: *Simon v. Bewick*, 52 M. 388.

56. A partner's bill of sale of partnership property to secure his individual debts does not affect a copartner's right unless sanctioned by him; the purchaser takes only the undivided share of the vendor, subject to all the rights of the other parties and to the account to be taken between them, and he cannot change the possession or make any specific division: *Kingsbury v. Tharp*, 61 M. 216.

57. A partner may give a chattel mortgage on the copartnership property, and if a seal be affixed it is a nullity and does not vitiate the mortgage: *Sweetzer v. Mead*, 5 M. 107.

58. Where one member of a copartnership gives a note in the firm name, the presumption is that it was given for partnership purposes; and the burden of proof is upon the copartnership to show the contrary: *Littell v. Fitch*, 11 M. 525; *Carrier v. Cameron*, 81 M. 373.

See BILLS AND NOTES, § 388.

59. A partner is not bound by an accommodation indorsement made in the name of his firm, but without his assent: *Heffron v. Hanaford*, 40 M. 305.

60. Where a person lends his name to a firm as maker or indorser of a note to raise money to carry on the firm business, either partner authorized to raise money for the purpose may make the terms upon which the accommodation is obtained, and may give such personal security to the maker or indorser as the firm may have to give: *Hopkins v. Thomas*, 61 M. 369.

61. Where persons are engaged as copartners in the business of running a vessel, paper indorsed by any of them in the firm name, if received in the regular course of their business and made payable to the order of the firm, will bind the other partners: *First National Bank v. Freeman*, 47 M. 408.

62. Joint relations as partners or otherwise

will not give one any implied authority to authorize the use of another's name as maker or indorser where their apparent interests or legal obligations might be different: *Stroh v. Hinchman*, 37 M. 490.

63. Where a partnership involves but a single transaction, one partner in closing it up has no implied authority to take from the firm's debtor a note payable to himself individually for his own use, and extend the time of payment without interest, and the partnership can sue on the original debt before the extension expires: *Lemiette v. Starr*, 66 M. 539 (June 23, '87).

64. One partner cannot submit partnership matters to arbitration without a special authority for that purpose from his copartners: *Buchoz v. Grandjean*, 1 M. 367; *Backus v. Coyne*, 35 M. 5.

65. A submission being thus entered into without special authority, and an award made in pursuance of it in favor of the partnership, it was held that the other party might defeat a suit on the award by objecting such want of authority: *Buchoz v. Grandjean*, 1 M. 367.

66. It is beyond the power of one partner not specially authorized for that purpose to submit to a third person the adjustment of a general average claim, where the submission involves the examination of witnesses, imposes duties that are not merely clerical, and requires a decision that is to be conclusive between the parties: *Backus v. Coyne*, 35 M. 5.

67. A partner can bind his firm by a submission to arbitration if expressly authorized to do so, and no acknowledged power of attorney is necessary: *Davis v. Berger*, 54 M. 652.

68. A replevin in suit was begun by partners, and after the partnership was dissolved, but before the settlement, the matter in dispute was submitted to arbitration by one of the partners in the firm name. The other did not repudiate this action, but merely said that he was not to be held liable under it. Held, that this was not enough to release him in an action of trover based on the award: *McArthur v. Oliver*, 53 M. 299.

69. Joinder of partners, in suing out a writ of error to review the judgment on an award against the firm, has the effect of affirming the authority delegated to one partner to submit to arbitration: *Davis v. Berger*, 54 M. 652.

70. Partners have no implied authority to confess judgment for each other: *Soper v. Fry*, 37 M. 236.

71. One partner may transfer a portion of the assets for the purpose of paying or securing debts, or to raise means to carry on the concern; but the power of divesting entirely

one partner of his interest, appointing a trustee for both, and breaking up the concern, is not one of the powers either contemplated or implied by the contract of partnership: *Kirby v. Ingersoll*, H. 172.

72. One partner cannot make a general assignment of the partnership effects to a trustee for the benefit of the creditors of the firm without the knowledge or consent of his copartner, especially when he is on the spot and may be consulted: *Id.*, H. 172, 1 D. 477.

73. But it seems that a partner's power to make such an assignment may sometimes be implied from circumstances showing that it was intended to be conferred: *Kirby v. Ingersoll*, 1 D. 477.

74. Where an assignment of a partnership claim was made by an agent of the firm, with the consent of one of the partners, to apply on a demand against the agent and the consenting partner, it was held that the objection that the assignment was invalid for want of the assent of all the partners only went to the sufficiency of the consideration as between the partnership and the assignees, and could only be raised by the partners themselves: *Kull v. Thompson*, 38 M. 685.

75. One partner may bind his copartner in all matters within the scope of the copartnership; the implied authority of one partner to bind his copartner is generally limited to such acts as are in their nature essential to the general objects of the copartnership: *Kirby v. Ingersoll*, H. 172.

76. Each partner is the general agent of the others in all matters within the scope of the partnership business, and what is known to one is supposed to be known to all: *Moran v. Palmer*, 18 M. 367.

77. Every member of a partnership, in legal contemplation, without any special powers being conferred upon him by the articles of copartnership, is not only a principal, but a general agent of all the copartners in the transaction of the company business: *Burgan v. Lyell*, 2 M. 102.

78. But one partner cannot bind his copartner by any contract not within the immediate scope of the partnership, unless with such copartner's knowledge and consent: *Barnard v. Lapeer & P. H. P. R. Co.*, 6 M. 274.

79. Such knowledge and assent must be established by evidence affirmatively showing it, or from which it may be clearly affirmed: *Ibid.*

80. That a plank road will be of incidental benefit to a copartnership engaged in the lumber business will not authorize one part-

ner, without the assent of the other, to bind the firm by a subscription to the stock of a corporation organized for constructing such road: *Ibid.*

81. Where one partner subscribed the name of the firm to stock in a corporation, without the assent of a co-partner, it was held that the latter did not recognize his relation as stockholder in the corporation, and become liable to pay the subscription, by failing to express his dissent when demand of payment was made upon the firm: *Ibid.*

82. A partner binds his firm only on the theory of an implied agency for the purposes of the mutual adventure; and the agency does not extend beyond what may be fairly regarded as coming within its reach: *Hotchin v. Kent*, 8 M. 526.

83. It is within the authority of the managing partner of a business to authorize dealings with other business establishments, whereby each other's clerks or customers are furnished with goods which are charged to each other: and when so authorized such dealings bind until notice to the contrary: *Cameron v. Blackman*, 39 M. 108.

84. Where a third person does an act for the benefit of a partnership, a subsequent ratification of it, during the partnership, by one of its members, is a ratification by all: *Lyell v. Sandbourn*, 2 M. 109.

85. Where a member of a mining company, who was also one of the managers of the company, employed the plaintiff to work for the company, it was held immaterial whether his powers as manager were general, special or limited, if the plaintiff at the time had no notice of any abridgment of his powers by the articles of copartnership: *Burgan v. Lyell*, 2 M. 102.

86. What either partner does in the collection of a firm debt is presumptively done with the other's sanction: *Harvey v. McAdams*, 32 M. 472; *Rolfe v. Dudley*, 58 M. 208.

87. Where one member of a firm has taken a chattel mortgage on a stock of goods to secure a debt to the firm, he has authority, as partner, to take goods in payment of the debt and to create an agency for selling them by putting them in the mortgagor's charge, and if he thinks that keeping up the stock is the best way to sell the goods to advantage, slight evidence of his partner's assent is enough to make the firm responsible for the agent's acts in purchasing goods for that purpose: *Banner Tobacco Co. v. Jenison*, 48 M. 459.

88. The partnership name represents the constituents of the firm, and when it is rightly

pledged the respective partners are jointly bound: *Gates v. Fisk*, 45 M. 522.

89. Neither an agent nor a partner has any implied power to apply partnership moneys on private debts; and one who deals with an agent cannot, without the principal's authority or acquiescence, apply money due to the principal upon a private account with the agent: *Chase v. Buhl Iron Works*, 55 M. 189.

90. A partner's consent to the cancellation of an insurance policy in which the firm is interested is conclusive on the firm; and a formal surrender of the policy is unimportant, except as evidence of the cancellation: *Hillock v. Traders' Ins. Co.*, 54 M. 582.

91. An employment by one member of a firm of an attorney's legal services, in a matter not strictly within the firm's business, but in its interest, is ratified if the other partner pays the attorney money toward his expenses in that matter, with knowledge of its nature, and when so ratified both partners are made liable: *Holmes v. Kortlander*, 64 M. 591.

92. Whether an arrangement made in the firm interest by a member of a firm of liquor dealers, for legal services in prosecuting certain proceedings to secure, for a saloon to which the firm expects to sell stock, authority to sell liquors, is outside of the firm business, *quere: Ibid.*

93. Where two persons who have entered into a contract for a copartnership rescind it, one of them has no power afterwards to bind the other by ratifying a contract previously made by them, and which was void under the statute of frauds when made: *Chamberlain v. Dow*, 10 M. 319.

94. The refusal of one partner to deliver up, when demanded, property taken in execution under a void judgment for a firm debt, is sufficient to bind his copartner: *Rolfe v. Dudley*, 58 M. 208.

95. Where two persons are engaged as partners in keeping a place for selling liquors and in selling without a license, the selling by one is the act of both, and may be given in evidence against the other in an action against him for the penalty: *Smith v. Adrian*, 1 M. 495.

As to admissions by one partner, see EVIDENCE, §§ 482-487.

III. RIGHTS AND REMEDIES AS BETWEEN A FIRM OR PARTNERS AND THIRD PERSONS.

96. There is no legal presumption that a firm has any less power to rent its realty than

any one else: *Williams v. Shelden*, 61 M. 311.

97. A dormant partner is a secret partner; one who becomes such by a secret arrangement while his associate is held out to the world as sole manager and proprietor of the business: *Beecher v. Bush*, 45 M. 188.

98. Whether a special partner becomes liable as a general partner by a change in the nature of the business without his knowledge, *quere*: *Hinchman v. Barnes*, 21 M. 556.

99. Under H. S. § 2350, requiring a notice of special partnership to be published in two newspapers published in the senatorial district in which the business shall be carried on, *held*, that the territory of a city, village or township—one part of it as much as another—is the place of publication within the meaning of the statute: *Ibid*.

100. A partner is not liable for bonds received without his knowledge by his copartner on special deposit, the receiving of special deposits being no part of the firm's business: *Hatheway's Appeal*, 52 M. 112.

101. Where H. was the general partner in a firm called H. & Co., an order drawn on H. as "general partner," and accepted in the firm name, is to be treated as an order on and acceptance of the firm, and not as an individual transaction: *Carney v. Hotchkiss*, 48 M. 276.

102. A. and B. constituted one firm, A., B. and C. another. Both firms had the same name, but the business of each was kept distinct. A. gave a note in the firm name, and a bank discounted it, relying wholly upon the credit of A. and B., for the use of which firm the discount was procured. *Held*, that the bank could not hold C. upon the note: *Hastings Bank v. Hibbard*, 48 M. 452.

103. Where several persons put up a building as partners, and one of them buys brick for the purpose without an express understanding with the vendor that it is an individual purchase, and the brick is actually used in the building, the partners are liable as such for its value: *Stecker v. Smith*, 46 M. 14.

104. As between the creditors of a previous firm the separate creditors of a partner who continued the business and was the sole visible owner of the property employed in trade, and where the separate creditors had given credit, relying on the property employed in trade for payment, such creditors should be preferred to the creditors of the firm: *Topliff v. Vail*, H. 340.

105. The creditors of a partnership have a right to payment out of the partnership effects, in preference to the creditors of an individual partner: *Ibid*.

106. A partner's individual creditors antedating the partnership are entitled to be paid out of his estate's share of the assets before the other partner is reimbursed for his payment of firm debts: *Killefer v. McLain*, 70 M. 508.

107. If one member of a copartnership enter into a transaction on his own behalf, which is within the scope of the partnership business, his copartners may insist that it is a fraud upon them, and claim the benefits resulting from it. But this is a right which the partners alone can assert, and is not available to third persons, for the purpose of fixing a liability upon the partnership when such claim has not been asserted: *Lockwood v. Beckwith*, 6 M. 168.

108. One who has purchased of one of a firm property subject to partnership debts, and has agreed in writing to assume and pay such debts as part of the purchase price, thereby recognizes the equitable lien of the partnership creditors; and it is not necessary that such creditors should put their claims in judgment before filing a bill to compel such payment: *Olson v. Morrison*, 29 M. 395.

109. On the question of acquiescence and undue delay in exercising the right to rescind a contract, the firm must be conclusively held to have notice of every fact or thing material to the question, which any member of the firm knew; and any act of any member, or any letter written by one in their name, with reference to this business, must be treated as the act or letter of the firm: *Hubbardston Lumber Co. v. Bates*, 31 M. 168.

110. Whatever is done by one member of a partnership in the course of the business is presumed to be known to the others; this presumption applies as strongly to the acts of a partner who is the husband of a creditor of the firm, in his dealings with his wife as such creditor, as to his dealings with any other creditor: *Osborn v. Osborn*, 26 M. 48.

111. Where the defence to a partnership note is that it was given in a transaction not within the line of the partnership, considerable latitude should be allowed in the proof of facts tending to show that all the defendants knew that their partnership name was being used in dealings with the plaintiff; the fact that the business and correspondence was carried on in the partnership name is admissible in connection with evidence from which the jury might infer that all the defendants knew that plaintiff understood that he was dealing with the firm: *Mills v. Bunce*, 29 M. 364.

112. Where a member of a mining copartnership assigns his stock in the company to a

third person, he is still liable as a copartner for debts subsequently contracted by the company to a person who had no notice of his withdrawal: *Burgan v. Lyell*, 2 M. 102.

113. In suing an old firm upon dealings continued with its successors, it would be proper to admit in evidence a note payable to and indorsed by the new firm, if it related to the account with the old one: *Botsford v. Kleinhans*, 29 M. 332.

114. Where two firms have dealt with each other and each with the members of the other under a general understanding that the individual account of any partner should be treated as a matter of firm account against his firm, and dealings and settlements have, from time to time, been made on this basis, the balance found on such a settlement made in good faith was *held*, as between the parties, to be a legitimate demand on behalf of the creditor firm against the other, for which an action would lie: *Davis v. Dodge*, 30 M. 267.

115. An action will not lie against a firm upon a note given by one partner without the other's knowledge or assent, and without any consideration to the firm, and if it does not pertain to the firm business and was taken for the private debt of the partner who gave it: *Roberts v. Pepple*, 55 M. 367.

116. Plaintiffs sued as partners, and a witness on their behalf testified to admissions by defendants sufficient to make out their liability. The witness said nothing respecting the partnership of the plaintiffs, and was not cross-examined as to his knowledge of them. Defendants put in no evidence. *Held*, that a judgment for plaintiffs on this evidence should not be disturbed: *Wattles v. Moss*, 46 M. 52.

117. A partner's private means are not open to inquiry in an action against the firm, which can only be liable for partnership purposes or for such as are presumably so. And a partner cannot use partnership funds for private purposes: *Roberts v. Pepple*, 55 M. 367.

118. Suit on a promissory note was brought against certain persons named Spear, Wetmore and Freeman "as copartners doing business under the firm name of Propeller Ira Chaffee." The note was made payable to "Prop. Ira Chaffee," and was indorsed "Prop. Ira Chaffee, F. B. Spear, ma'g'r, F. B. Spear, W. L. Wetmore." Freeman alone defended, and he pleaded the general issue with an affidavit denying execution. There was evidence tending to show that he and the other defendants owned the propeller, and that the profits from it were shared in the ratio of their interests. *Held*, that in submitting the case the powers and duties of managing owner

and the rights and liabilities of the owners were immaterial, but that the case should be left with the jury with proper instructions dependent on finding a copartnership in fact as the foundation of any right to recover: *First National Bank v. Freeman*, 47 M. 408.

119. In an action on partnership paper given *mala fide* but binding one partner, evidence is admissible to exonerate a copartner: *Freeman v. Ellison*, 37 M. 459.

120. Where plaintiffs bring suit as partners composing a certain firm, it is necessary for them to prove that they compose the firm before giving evidence of transactions between the firm and defendants: *Lee v. Hardgrave*, 3 M. 77.

121. Where plaintiffs sue as partners, not upon any contract made or dealings had with them as such, nor upon negotiable paper, and the partnership is put in issue, the real question to be submitted to the jury is whether the plaintiffs are partners *as between themselves*, and not whether they have, in any way, made themselves liable as partners to third persons. And it is erroneous for the court to charge the jury that, if the evidence shows the plaintiffs have made themselves partners as to third persons, they have in fact become general partners, and as such are entitled to maintain the action: *Gray v. Gibson*, 6 M. 300.

122. One who brings suit as against partners must show the existence of a joint contract or joint promise, express or implied: *Sager v. Tupper*, 38 M. 258.

123. A partner's authority to use the firm name in a particular case, and his partner's knowledge of or acquiescence in his doing so, are open to inquiry in an action against the firm based on his act; and direct questions as to his authority and such acquiescence may be asked, subject to full cross examination: *Roberts v. Pepple*, 55 M. 367.

124. A firm cannot be released from its debts by any agreement with a stranger firm to which it sells out, that the latter shall pay the debts, unless the creditors accept the subrogation: *Hayes v. Knox*, 41 M. 529.

125. A purchase of partnership assets and assumption of responsibility to outgoing partners does not bring the purchasers into contract relations with the firm's creditors so as to enable them to take advantage of a contract partly performed by it: *Ayres v. Gallup*, 44 M. 13.

126. Where dealings with outsiders pass from a firm to its successors, the liability of the old firm is not ended unless the outsiders have agreed to accept the liability of the new

firm in its place: *Botsford v. Kleinhans*, 29 M. 832.

127. Those who continue dealing with a firm after its composition has been changed, the new firm assuming the rights and obligations of the old one, have a right to assume that the business of the two will be kept separate, and cannot be bound without their knowledge, consent or acquiescence, by the transfer of the old account to the books of the new firm, and by the continuance of the old accounts after the dissolution of the old firm; nor is it allowable in a suit by them against the old firm to inquire into their separate dealings with the new one: *Ibid*.

128. A partner's sale of his interest in the assets of the firm does not, it seems, assign his personal indebtedness thereto unless the instrument of transfer expressly includes it: *Gardiner v. Fargo*, 58 M. 72.

129. Where a firm is sued the partners cannot claim set-off of sums due them individually: *Sager v. Tupper*, 38 M. 258.

As to proof of execution of partnership paper, see **BILLS AND NOTES**, §§ 275, 286-290, 293.

Partners as parties to actions, see **PARTIES**, §§ 1, 2, 69, 111-116, 180, 183.

Insurance and proofs of loss by one partner, see **INSURANCE**, §§ 27, 71-74, 259.

As to attachments and executions on firm property, and the right of exemption, see **ATTACHMENTS**, §§ 100-102; **EXECUTIONS**, §§ 89-92, 121, 122.

That one partner may seek dissolution of attachment, see **ATTACHMENT**, § 186.

As to where chattel mortgage on firm property should be filed, see **CHATTEL MORTGAGES**, §§ 70-73.

Where and to whom firm property is to be assessed for taxation, see **TAXES**. III. (c), (d).

IV. RIGHTS, LIABILITIES AND REMEDIES AS BETWEEN PARTNERS; ACCOUNTING.

(a) *In general.*

130. Partners are presumed, in the absence of any showing of their respective interests, to be equal partners: *Northrup v. McGill*, 27 M. 234.

131. One partner has presumptively an equal interest with another in the partnership property and an equal right to share in it when the partnership is dissolved; it is not, however, an interest in specific articles, but in the surplus that remains after the firm debts are paid, and as he has no separate prop-

erty in the assets of the firm, his share is not separable from that of his partner, and is subject to the final adjustment of accounts between the partners themselves, when it may amount to little or nothing: *Hutchinson v. Dubois*, 45 M. 148.

132. Partners do not hold as tenants in common or joint tenants. The firm property constitutes an identical and entire interest: *Hubbardston Lumber Co. v. Covert*, 35 M. 254.

133. A partner is not merely part owner of the partnership property; he has an entire as well as a joint interest in the whole of it, and is in some sense a trustee of the partnership assets as a trust fund for the payment of creditors: *Hutchinson v. Dubois*, 45 M. 148.

134. In a case where the legal title was an equal tenancy in common the court established the rights of a deceased partner as amounting only to one third, instead of one half, and prevented an administrator's sale which would have misrepresented the real interest: *Thayer v. Lane*, W. 200.

135. Where a partner who sells out his interest in a firm to a third person takes securities for the price they form no part of the firm assets, but are his private property: *Glynn v. Phetteplace*, 26 M. 883.

136. Lands conveyed to the members of a partnership, in satisfaction of a partnership debt, are to be regarded for all purposes of arranging balances between the partners, paying debts and closing up the partnership business, as personal property: *Moran v. Palmer*, 13 M. 367.

137. In equity, as between partners themselves, real estate purchased by them with partnership effects is partnership property, and on the dissolution of the firm should be divided as such, each party taking the same share in it as in the personal property, unless at the time of the purchase it was understood not to be a partnership transaction: *Thayer v. Lane*, W. 200.

138. Lands that are part of a common partnership stock have in equity the character of personality; and the legal title thereto is subordinated to the incidents of partnership funds and accounting: *Godfrey v. White*, 43 M. 171.

139. Where one partner purchased property for the use of the firm, but in his own name, though with the money of another partner, and the property was actually used as firm assets, held, that the case did not fall within the principle of the statute prohibiting resulting trusts, but must be treated as partnership property: *Way v. Stebbins*, 47 M. 296.

140. Where partners owning land individu-

ally agree to put it into the firm, and where, to effect this, each conveys an undivided half to the other, such land becomes firm assets: *Killefer v. McLain*, 70 M. 508.

141. Land may belong to a partnership although held in the name of one partner: *Williams v. Shelden*, 61 M. 311.

142. Two out of three partners owned the lands which were occupied for partnership purposes, as tenants in common under the same deed. The partnership articles, which were on record, set forth that it was agreed that upon the fulfilment of certain terms by the third partner, including the payment by him of "one-third of the amount paid by them for the real estate purchased for the purposes of said business," they would convey to him an equal undivided one-third of said real estate. Held, that the partnership articles did not make the lands partnership property, and if it was meant they should become so on payment by the third partner, they would not come into the accounting, but would remain the property of the partners who held the title; one of the owners could therefore mortgage his interest in them, and in a suit for an accounting they could not be treated as partnership property as against the mortgagees: *Gordon v. Gordon*, 49 M. 501.

143. The rights of a firm under a mortgage held by it are not affected by the purchase of the equity of redemption by one of the partners for himself: *Gordon v. Tyler*, 58 M. 629.

144. Certain land belonging to an individual partner was included as assets in the partnership articles, and the firm gave a mortgage on it. The owner drew up a deed conveying an undivided half of it to his partner, but it was not recorded, and he afterwards destroyed the deed and took up the mortgage with partnership notes. When he went out of the firm he took a bond from his partner binding the latter to pay all partnership debts, and gave him clear title to the land which the partner bought with the other assets. Held, that by destroying the former deed he would have been estopped from enforcing payment of the notes but for the subsequent conveyance of clear title, after which the notes constituted a liability enforceable by suit on the bond: *Mette v. Feldman*, 45 M. 25.

145. Where property owned by two partners is subject to a mortgage, and, as between the two, it is the duty of one to discharge it, and the other pays the debt on condition that the mortgage shall inure to his benefit, the latter is entitled to reimbursement, with inter-

est, through the mortgage: *Laylin v. Knox*, 41 M. 40.

146. Where it was the duty of one partner to furnish the money required to buy a tract of land for the firm business, the title to which was taken in his name, and for which he paid the purchase price, overlooking, however, a small sum due for interest, which his copartner without express request subsequently paid in order to release the land from encumbrance, it was held, in a suit for such interest money and for other advances, that an implied request to pay the interest might be inferred: *Bates v. Lane*, 62 M. 182.

147. In the absence of any agreement to the contrary, it is fair to presume that a retiring partner does not intend that the partnership property shall be used for the individual benefit of a partner who continues the business, leaving the debts of the firm unpaid; and this was held to be the presumption where the retiring partner transferred the partnership effects to a partner continuing the business, who agreed to pay the partnership debts, and gave bond to that effect: *Topliff v. Vail*, H. 340.

148. An indemnifying bond given by a firm to a retiring partner is intended to secure him against debts of the firm to third persons on which he might be held liable if the firm did not pay them. It would not be regarded as meant to cover a credit to the partner himself on the books of the firm, as that would be a debt to himself for which he was himself in part responsible as partner: *Lambert v. Griffith*, 50 M. 286.

149. Where on the dissolution of a copartnership one partner purchases the interest of his copartners, agreeing to pay all the partnership liabilities, the partner thus retiring may still be held liable by the creditors. But if he is compelled to pay he is entitled to indemnity from the other partner, and is therefore as to such other partner a surety merely upon the partnership obligation: *Smith v. Shelden*, 35 M. 42.

150. One member of a copartnership sold his interest to his copartner and a third party, who orally agreed "to see that all the debts of the old firm were paid, and that he, the retiring partner, should not be called upon for any of those debts." Held to be a mere contract of indemnity, upon which the party's remedy was at law. Held also, that the agreement was not within the statute of frauds, and the actual surrender of the party's interest in the firm was a sufficient consideration to support it: *Bonebright v. Pease*, 3 M. 318.

(b) *Proceedings at law between partners.*

151. The assignor of a partnership interest cannot be sued by his assignee and the remaining partners on a claim held by the original firm against him: *Learned v. Ayres*, 41 M. 677.

152. Neither a partner nor his assignee can maintain an action at law against the firm, even after its dissolution, for the amount of a note made by the firm to the partner and afterwards accidentally destroyed without ever having been indorsed: *Davis v. Merrill*, 51 M. 480.

153. The remedy of a partner, or of his assignee, against the firm upon a note given by it to the partner, must be in equity, if anywhere, after the dissolution of the partnership, without an accounting or settlement: *Ibid.*

154. One partner cannot at law sue another, after dissolution of the firm, for the amount which would have been due him on an accounting, unless defendant has expressly promised to pay it: *Miner v. Lorman*, 56 M. 212.

155. A partner after drawing checks upon the funds of the firm for his personal use, and charging them against himself, was succeeded by another partner, and sold out his interest to the new firm. *Held*, that the new firm could not sue him at law for the amount of the checks, nor use them as offset against an action brought by him against the firm; the mutual liabilities of the old firm should be settled by an accounting: *Gardiner v. Fargo*, 58 M. 72.

156. An obligation legal in form can be sued at law; and a note by one partner to another, even if made to him as a trustee for the firm's benefit, can be sued at law according to its terms, and the defence that it is a partnership matter must either be made at law or under proceedings brought by defendant in equity to establish it: *Mitchell v. Wells*, 54 M. 127.

157. Where no assets remain after payment of a firm's debts, the liability of one partner for money advanced to him by the other after dissolution beyond the latter's share of the debts is a simple money demand, which could be settled without any legal obstacle in an ordinary action at law: *Wheeler v. Arnold*, 30 M. 304.

158. Proof by a surviving partner that he had furnished more than his share of the capital, that the capital was all absorbed, leaving large debts and no assets, and that he had paid

debts at the request of the deceased partner, would authorize a recovery against the latter's estate for contribution: *Ibid.*

159. Where a final statement of accounts is made between two partners, and one recognizes a balance as due the other, an action lies for such balance: *Miner v. Lorman*, 59 M. 480.

160. Where one of a firm containing more than two members dies, and there is nothing to show that all the rest stand as one partner only, a balance in the partnership affairs in decedent's favor cannot, in a court of law, be offset against a claim against his estate by the survivors: *Elder's Appeal*, 89 M. 474.

161. Money furnished by one partner to another to enable him to meet his obligations to the firm is a personal claim, and has nothing to do with a final partnership accounting, unless connected with it by some special dealing, and an action at law lies for its recovery: *Bates v. Lane*, 62 M. 132.

162. One who has sold stock and leased a store to a firm and has then taken a partnership interest in the business can offset the amount due him on such sale and lease in an action against him by the firm, and need not leave it to a partnership accounting already pending: *Kinney v. Robison*, 52 M. 389.

163. Where one partner has paid firm debts from his private funds at the other's request on the latter's promise to pay half the amount, he may, after dissolution of the firm, offset so much against an independent claim for which his former partner sued him at law; and this though a suit in equity was pending for a partnership accounting: *Cilley v. Van Patten*, 58 M. 404.

164. A claim of one partner in a suit against the other upon a contract not connected with the partnership affairs cannot be subjected to a set-off in favor of the other partner arising out of such affairs where there has been no accounting and no balance found due to the other after a final liquidation of the firm's indebtedness: *Randall v. Baird*, 66 M. 812.

(c) *Accounting in chancery.*

That delay by an excluded partner for more than six years in seeking an accounting is fatal unless the partnership articles are under seal and contain covenants, see EQUITY, § 601.

165. Proceedings between partners for an accounting are always for the principal purpose of reaching a statement of money balances and a division of assets as personalty. Lands may be involved, but the locality of the

lands does not affect the jurisdiction of the court, which depends upon the residence of the parties: *Godfrey v. White*, 43 M. 171.

166. Where partnership articles provided that the partnership should expire by limitation, but the business was allowed to run on until a later date when a new firm was formed, leaving out one of the original partners, and bringing in another, it was *held* that the partner who was dropped had a right to an accounting from the members of the new firm: *Near v. Lowe*, 49 M. 482.

167. After a partner has sold out his interest in a firm his former copartner has the right, as against him, to have the concern wound up, but this can be done only by bringing in all parties concerned, and by seeking a distribution and an accounting. The purchasers from the retiring partner take such interest as he would have had and no more, and that would ordinarily be subject to the final settlement, and the purchasers therefore become parties: *Glynn v. Phetteplace*, 26 M. 883.

168. The fact that a partner has sold his interest to a third person and has agreed to receive from him a certain sum until he is fully paid does not deprive him of his right to file a bill against his copartner for dissolution and accounting: *Russell v. White*, 63 M. 409.

169. Probate proceedings for discovery do not bar an otherwise proper suit in equity for winding up the partnership concerns: *Perrin v. Lepper*, 49 M. 347.

170. Where the parties to a suit for a partnership accounting have agreed by their pleadings that their firm was dissolved before suit was brought, neither can afterward claim the contrary, especially if he has made no application to the court for leave to change his pleading but has given evidence in its support: *Candler v. Stange*, 53 M. 479.

171. Partnership lands cannot be distinguished from other assets for purposes of accounting and settlement: *Godfrey v. White*, 43 M. 171.

172. No allowance should be made in a partnership accounting for matters antedating the partnership, even though relevant as evidence: *Wells v. Babcock*, 56 M. 276.

173. Neither partner need submit to an overhauling of his business and accounts for a period not within the time fixed by their pleadings and consent decree: *Candler v. Stange*, 53 M. 479.

174. Any reasonable expense incurred by either member of a firm, with or without the consent of the rest, in the legitimate prosecution of the partnership business, and for the benefit of the parties, should be allowed upon

a partnership accounting. So *held* of the expense of exploring premises leased to the firm for mining: *Sweeney v. Neely*, 53 M. 421.

175. Where one partner furnished timbered land to be lumbered by the firm, and also furnished tools and outfit for the work, and was to be paid interest upon his moneys invested, the agreed cost of the timber was properly taken as the cost of the land, less its value as stripped and returned to him, since the land itself was not to be used; and land from which no timber was taken should not be considered in an accounting, nor should the firm be charged with taxes on land for which he received credit. And it was proper to allow for outfit at the difference between its first cost and the value of what was left when the firm dissolved, the wear and tear being in some degree a consumption of it and consequent diminution of profits: *Wells v. Babcock*, 56 M. 276.

176. Where an agreement for a settlement of partnership accounts provided that sums found due to either party should be added to, or deducted from, an agreed sum to be paid to one of them, the party claiming the benefit of any such additions or reductions has the burden of proving that the amount has been received and not accounted for, or paid out and not credited: *Lambert v. Griffith*, 44 M. 65.

177. Where a credit to a partner appeared upon the books of the firm and was distinctly ascertained, it was regarded as having been included in the partnership settlement, which was evidently meant to leave nothing unprovided for: *Lambert v. Griffith*, 50 M. 286.

178. Where a partner had turned over to the firm certain securities to be used in paying for property purchased by them, and the firm credited him with them and guaranteed them to the party to whom they were given, and when a deficiency afterwards arose the partner who had been credited took back the title to a part of the mortgaged premises, it was to that extent proper to charge back the securities to him: *Harrison v. Dewey*, 46 M. 173.

179. Upon a bill for partnership accounting it appeared that no loss had occurred in the business, but that defendant had kept no such books as would enable full accounts to be stated. *Held* proper to require defendant to account for all the money put into the business by complainant: *Robertson v. Gibb*, 38 M. 165.

180. A partner must use his best efforts and judgment in promoting the firm business without further compensation than his share in the profits: *Heath v. Waters*, 40 M. 457.

181. The sickness of a partner is one of the

risks incidental to partnership business, and does not give another partner any claim for personal services in conducting the entire business if the partnership articles do not provide for any: *Ibid*.

182. Failure in duty as a partner may be a ground for dissolving the partnership, but not a claim by diligent partners for compensation: *Godfrey v. White*, 43 M. 171.

183. Partners cannot ordinarily claim allowances for services exceeding those of their associates; but where those who do not expect to be personally charged with the business of the firm perform special services, it is proper to allow them compensation beyond their share of the profits if they had an understanding with the others that they were to be compensated for them: *Ibid*.

As to when interest is charged against one partner in favor of the other on advances, etc., see INTEREST, §§ 81-83, 50, 64.

184. Complainant, after a dissolution of partnership between himself and defendant, obtained a temporary injunction restraining defendant from disposing of the firm's assets, but afterwards the injunction was modified by requiring both parties to file a bond to account for the assets, and allowing either to dispose of the assets, but not below cost. Without filing bond complainant took possession of a large part of the firm property, and sold it for less than cost, without authority from defendant. *Held*, that on an accounting complainant was not entitled to an allowance in his favor of the losses on the assets that went into his hands, and that his irregular and unauthorized conduct precluded him from relief: *Kinney v. Robinson*, 66 M. 113.

185. Where, on division of partnership assets, one partner has taken certain accounts at their face, and been charged with them as moneys he could collect, it is not error, on a subsequent accounting in equity between the parties, to allow such partner for money received from debtors during the partnership by a representative of the other partner, and not credited on the books, these payments reducing the real amount of the accounts below what they had appeared to be: *McGunn v. Hanlin*, 29 M. 476.

186. In a suit in equity for an accounting an independent claim of one copartner against the firm cannot be applied on the amount found due him from the firm: *Kinney v. Tabor*, 62 M. 517.

187. A fair compromise deliberately made by partners in settling their accounts ought not to be disturbed on a bill for an accounting where no false charges or omissions of specific

credits are shown: *Harrison v. Dewey*, 46 M. 178.

188. A settlement between partners which does not seem to have been unfair will not be disturbed at the instance of one who has not within a reasonable time repudiated its terms, nor taken any steps to rescind it: *McGunn v. Hanlin*, 29 M. 476.

189. The decree in a suit for accounting cannot provide for partition unless by consent. The partners have a right to have the assets disposed of, if they desire; and lands not sold are left as a distinct tenancy in common: *Godfrey v. White*, 43 M. 171.

190. A decree for the settlement of partnership accounts was affirmed on the facts: *Wingarden v. Verhage*, 68 M. 14.

As to costs on accounting, see COSTS, §§ 171, 250.

As to receivership in cases of partnership accounting, see RECEIVERS.

As to appeals in suits for accounting, see APPEAL, II, (b), 7, 8.

V. DISSOLUTION AND ITS EFFECT.

(a) *What works dissolution; notice.*

191. A partnership may be dissolved at the will of either party where the agreement is silent as to its duration: *Buck v. Smith*, 29 M. 166.

192. A firm is dissolved by the death of a partner unless the partnership articles provide for continuance: *Roberts v. Kelsey*, 38 M. 602; *Jenness v. Carleton*, 40 M. 343.

193. Partnership relations between a man and a woman are dissolved by their marriage; and the man's continued possession of property owned by the woman but used by the firm is by virtue of a license merely, which would cease at her death: *Bassett v. Shepardson*, 52 M. 8.

194. A partnership is dissolved unless equity can interfere when one of the firm takes exclusive possession and gives notice of dissolution to the others and the public: *Solomon v. Kirkwood*, 55 M. 256.

195. The bankruptcy of partners dissolves the partnership. And if, after the bankruptcy, the partners continue the same kind of business under the same partnership name, it is a new partnership: *Atwood v. Gillett*, 2 D. 206.

196. Whether, where the duration of a partnership is not fixed by the agreement therefor, either partner cannot dissolve it at pleasure, *quere*. Whether any condition or

limitation as to its duration can be ingrafted on the partnership contract as an implication from its nature, *quere: Walker v. Whipple*, 58 M. 476.

197. Such notice of the dissolution of a partnership is sufficient as is likely to make the fact generally known in the locality concerned, and to those with whom business is done: *Solomon v. Kirkwood*, 55 M. 256.

198. Persons having no knowledge of a partnership are not entitled to notice of a dissolution: *Chamberlain v. Dow*, 10 M. 819.

(b) *Powers and liabilities of partners after dissolution.*

199. A dissolution of partners puts an end to the authority of one partner to bind the other by contracts. If the firm has been discharged from its debts in bankruptcy he cannot revive a debt afterwards by acknowledgment of it: *Atwood v. Gillett*, 2 D. 206.

200. Each member of a firm that has been dissolved has a right, unless otherwise provided to continue in the business in competition with the other, so long as neither can be held on the other's contracts: *Smith v. Walker*, 57 M. 457.

201. A surviving partner cannot bind co-survivors by signing the firm name without their express authority or ratification: *Jenness v. Carleton*, 40 M. 848.

202. On the dissolution of a copartnership the partner intrusted with the winding up of the business has no authority to give notes of the firm in settlement of partnership debts so as to bind the other partners to an extension of time of payment with an increased rate of interest. And this is so whatever may be the rule as to giving a mere acknowledgment of the amount due in the form of a due-bill or I. O. U.: *Smith v. Shelden*, 85 M. 42.

203. A surviving partner cannot, without express authority, bind co-survivors by a time note in the firm name, even for an indebtedness that occurred before the firm was dissolved by the death of one of its members: *Matteson v. Nathanson*, 38 M. 377.

204. A member of a firm that has been dissolved by the death of a partner cannot bind the survivors by indorsing a note in the firm name unless they ratify his act, even though the note may have been given for a debt of the firm: *Carleton v. Jenness*, 42 M. 110.

205. Where goods are ordered by one member of a firm, and the order has not been accepted nor the goods shipped until after notice of its dissolution, and the shipment varies from the terms of the order, the retiring part-

ner will not be bound to it, nor will he be bound if the conditions of the order are waived after the dissolution by the remaining partner: *Goodspeed v. Wiard Plow Co.*, 45 M. 322.

206. Upon the death of one partner a cause of action belonging to the firm survives in favor of the other: *Teller v. Wetherell*, 9 M. 464.

207. In an action against a surviving partner a debt which became due from himself separately, before or after his partner's death, may be included: *Newberry v. Troubridge*, 13 M. 263.

208. The right of action at law for any trespass on the property of a firm, a member of which has died, rests solely in the survivor: *Pfeffer v. Steiner*, 27 M. 537.

209. Surviving partners can recover in their own names for goods belonging to the firm, but sold by them, without joining the representatives of the deceased partner, or obtaining an assignment or organizing a new firm: *Bassett v. Miller*, 89 M. 133.

210. One cannot sue as surviving partner upon a cause of action that arose out of a transaction which did not take place until after the firm was dissolved by his copartner's death: *Mead v. Raymond*, 53 M. 14.

211. Where, after the death of a partner, one of his survivors has taken no part with the rest in carrying on partnership business, he is not bound by any implication that they constitute a new firm: *Matteson v. Nathanson*, 38 M. 377.

212. After the death of a member of a firm his son engaged actively in the business under the old style, without new partnership articles, and a promissory note in the firm name was given to a party in the regular course of business. Held, that the surviving partner and the son were liable on the note in the hands of a *bona fide* holder without notice, even though another person has meanwhile taken the place of the surviving partner in the business, and has given him a bond to indemnify him against claims against the old firm: *Swift v. Mead*, 62 M. 313.

213. A. and B. were partners in carrying on a hotel. Pending negotiations for a renewal of the lease under which they held the property A. became insane, and his death appeared imminent. B. negotiated for a lease to be taken by himself in case A. should die or should not recover his reason, and upon A.'s death, which soon occurred, B. took a lease. Held, that A.'s representatives had no interest therein, nor had they in the good-will of the business, for the reason that the good-will was

incident to the use of the property; that they could claim no interest in the profits of the business after A.'s death and pending a settlement, because of B.'s use of the furniture in the hotel, they having objected to its use but enjoined its removal; that they could hold B. liable only for its deterioration while so used; and that they could not charge B. for losses to the business during alterations and improvements made before A.'s death, and which both A. and B. contemplated would be made up by increased profits under the new lease: *Chittenden v. Witbeck*, 50 M. 401; *Witbeck v. Chittenden*, 50 M. 426.

214. A partner after the firm's dissolution, whereof a creditor had not yet learned, sent him his individual note for the firm's debt, and afterwards sent him notice to the effect that he had bought out the business, and would make some turn to adjust the firm's liabilities and save the creditor from loss. Subsequently the latter extended the note, and, the maker dying insolvent, sued the surviving partner on open account. *Held*, that whether the notice to plaintiff charged him with knowledge that the maker assumed the firm's liabilities—in which case defendant stood as surety and was discharged by the extension—was for the jury: *Johnson v. Emerrick*, 70 M. 214.

215. A firm dissolved after ordering a lot of merchandise, but it was all forwarded before the consignors knew of the dissolution, and after they learned of it they took a note, made in the firm name by the remaining partner, for the amount due. They afterwards brought suit against both partners on the common counts, and on the note. *Held*, (1) that the retiring partner could not be held upon the note against his objection, as after the dissolution the other could not bind him; but (2) that an action on the common count for goods sold and delivered would lie against both for the debt: *Goodspeed v. South Bend Plow Co.*, 45 M. 237.

216. The presentation to and allowance by commissioners on the estate of a deceased partner of a partnership debt does not make it necessary, in an action by the creditor against the surviving partners for the same debt, to show that he has exhausted his remedy against the estate of the deceased partner: *Manning v. Williams*, 2 M. 105.

217. Three days after the death of W., who, though without a partner, had been carrying on business under the name of W. & Co., defendant went to his store and bought goods, which were delivered to him, making payment by check at first drawn to W. &

Co., but afterwards changed by defendant, at the request of W.'s former clerk, so as to be payable to bearer, this being done on account of W.'s death. The check was cashed by W.'s clerk, who paid over the money to W.'s widow. She refused to pay over to W.'s administrator, who then brought trover against defendant for the goods. Defendant, who had previously had dealings with W., claimed that he supposed when he bought the goods that he was buying from a surviving partner of W., being misled by the name under which the business was done. *Held*, that defendant was liable: *Brennan v. Pardridge*, 67 M. 449 (Nov. 8, '87).

(c) Settlement by surviving partners.

218. A surviving partner is entitled to use the partnership real estate as firm assets so far as needed to settle the affairs of the firm, and the heirs of a deceased partner hold the legal estate as trustees for the equitable purposes of the firm: *Merritt v. Dickey*, 38 M. 41.

219. Partnership property vests in the surviving partner, subject to the firm debts, and the heirs of a deceased partner in whose name it was purchased cannot retain it until payment of such debts: *Way v. Stebbins*, 47 M. 296.

220. After dissolution by the death of a partner the settlement of partnership affairs is left to the survivor, who may, at a proper time, be required to account to decedent's personal representative: *Roberts v. Kelsey*, 38 M. 602.

221. The right and duty to wind up the business of a partnership after it has been dissolved by death is an incident of the partnership and rests with the survivor as a result of survivorship: *Loomis v. Armstrong*, 49 M. 521.

222. A surviving partner having the legal right to the possession of the partnership lands, a court of equity will not deprive him of that right, unless upon proof of mismanagement or danger to the partnership effects: *Connor v. Allen*, H. 871.

223. The surviving partner (or partners) holds the entire legal title to all the partnership assets: *Barry v. Briggs*, 22 M. 201; *Bassett v. Miller*, 39 M. 133; *Blodgett v. Muskegon*, 60 M. 580.

224. A sole surviving partner has a right, acting honestly and with reasonable discretion and diligence, to dispose of the assets as he pleases, to settle all debts against the concern, to make any compromise he may deem necessary, and to turn the assets into an avail-

able and distributable form: *Barry v. Briggs*, 22 M. 201.

225. A surviving partner is entitled to the proceeds of the sale of his deceased partner's interest in partnership lands disposed of by an administrator; and where he has bid off the interest himself without paying the price to the administrator, bondsmen of the latter cannot be held liable for the administrator's failure to collect the bid, the remedy of the estate being against the surviving partner, as such, to compel a faithful settlement of the firm business out of the assets, all of which he is entitled to control: *Merritt v. Dickey*, 38 M. 41.

226. The representatives of a deceased partner have no right of possession, and nothing but an equitable interest in the partnership property, until the business of the partnership has been settled and its debts paid; and though this equitable interest may, in equity, make them tenants in common with the surviving partner, subject to the debts of the firm and a final settlement, it does not constitute them tenants in common at law: *Pfeffer v. Steiner*, 27 M. 537.

227. A surviving partner who is closing up the firm business is bound to pay over to the decedent's estate, as fast as realized, its share of all money not needed to pay debts: *Heath v. Waters*, 40 M. 457.

228. A surviving partner, though legally vested with title to all firm assets, is also trustee to dispose of them for the best interests of decedent's estate; and is bound to keep its representative fully informed of their condition: *Ibid*.

229. A surviving partner procured from the executrix of the deceased the transference to him of a certain partnership claim, in compensation for his services in conducting the entire business during decedent's illness, and suppressed this claim from the inventory of the partnership estate. *Held*, that this transaction operated as a fraud in law: *Ibid*.

230. A surviving partner, by misrepresentations and fraudulent dealing, procured from the decedent's administratrix, who was also, as he knew, trustee for decedent's children, a conveyance of partnership interests belonging to decedent's estate for much less than their actual value. *Held*, that the use of the property thus wrongfully appropriated must be regarded as a continued use of the partnership assets never accounted for, which the survivor might properly be decreed to make good to the administratrix on a bill brought by her for an accounting: *Ibid*.

231. As against the heirs of a deceased

partner a surviving partner cannot mortgage the decedent's interest in partnership lands for his own individual debts, or for any purpose except to close up the business and pay partnership debts, and such a mortgage cannot be enforced by one who took it under circumstances that put him on inquiry: *Brown v. Watson*, 66 M. 228.

232. A surviving partner cannot claim compensation from the estate of a deceased partner for his personal services in winding up the business after the partnership has been dissolved by the latter's death, unless it has been agreed that he shall be compensated: *Loomis v. Armstrong*, 49 M. 521, 63 M. 355.

233. A decree against surviving partners for an accounting for assets of which they had jointly taken possession should be against them jointly for the whole amount, and not severally for the sums into which they divided it between themselves: *Bundy v. Youmans*, 44 M. 376.

As to when surviving partner is charged with interest, see INTEREST, §§ 46-49.

PARTY WALLS.

1. A., having put up a brick building, sold to the adjoining owner, B., a half interest in a side wall to be used as a party wall in a building which B. was putting up. C. was also building next beyond B., and the new buildings went up together as one. Their foundation was laid before the sale of the wall was made. After the new buildings were finished A. sued C. for injuries resulting to A.'s building from alleged defects in the construction of C.'s. The trial judge charged that there could be no recovery if the defect was in this general foundation, nor unless it was in the foundation of a vault that was in C.'s building. The defence claimed that A.'s building was in the same condition before C.'s was erected as afterward. Verdict was for defendant. *Held*, (1) that the instruction was too broad, as A. and C. had no contract relations which would preclude A. from suing; and (2) that, as there was some evidence, though slight, that the injury was in part due to a defect in the foundation proper of C.'s building, the instruction could not be said to be harmless on the ground that the verdict covered all defects: *Feige v. First National Bank*, 58 M. 164.

PATENTS.

1. Re-issue of a patent is to cure defects, and cannot destroy vested rights; and under

a re-issue to other persons than the original patentee, purchasers who have notice of previous equities are bound by them: *Harrison v. Ingersoll*, 56 M. 36.

2. U. S. Rev. Stat. § 4898, requiring assignments of patents to be recorded, is only for the purpose of protecting innocent purchasers: *Ibid*.

3. A. agreed to sell to B. an interest in two inventions, for the former of which only a patent had been obtained. A deed was duly executed by A. conveying his interest in this patent. Subsequently A. obtained a patent for the second invention. *Held*, that the deed could not be construed so as to include A.'s interest in the second invention: *Warren v. Cole*, 15 M. 265.

4. The assignee of a patent-right agreed to pay the patentee a certain sum "for each and every one of said machines sold or caused to be sold by him." *Held*, that this covered any transfer by him of the mere right to use the machine, and any "settlements" made with persons who were using machines of the kind: *Rodgers v. Torrant*, 43 M. 113.

5. A machine may be sold independently of the patent-right; and if sold or taken on execution a purchaser does not acquire a right to use it under the patent: *Ibid*.

6. A contract to allow one to use a patented improvement is broken by suing out and serving an injunction to restrain him from doing so: *Sullings v. Goodyear Co.*, 36 M. 814.

7. A license to use an improvement covered by a patent need not be in writing: *Nichols v. Marsh*, 61 M. 509.

8. Complainants under an oral arrangement were licensed to use a certain patented improvement. They executed the arrangement on their part; and as defendant's open denial of their rights had a tendency to prevent sales, it was *held* that defendant could be compelled to give them a written license: *Ibid*.

9. By written contract defendants were licensed to make and sell a patented article, the license to be terminable on notice by the licensor upon the licensees' failure to pay the agreed royalty; royalty due at the time of service of notice not to be discharged. *Held*, that the licensees could terminate the license by written notice, and were not liable—under the contract—for subsequent use of the invention: *Garver v. Bement*, 69 M. 149 (March 2, '89).

10. One who, in consideration of the transfer to him of an exclusive right in a patent improved cheese-safe, agrees to use all reasonable diligence in the manufacture and sale, and to pay a royalty on each of such safes

sold, is not bound to use extra efforts to dispose of such safes, or to withhold other safes from competition: *Fornbrook Manuf. Co. v. Barnum Wire Works*, 63 M. 195.

11. One who agrees to pay royalties on sales of cheese-safes containing a patented wire-cloth curtain which accommodates itself by means of certain devices to the change of direction from upward to horizontal is not subject to such royalty for selling safes containing curtains of slats fastened to a cloth back, and occupying an analogous position and purpose to the wire-cloth curtains patented: *Ibid*.

12. Where one agrees to pay a royalty on each sale by him of a patented article, such royalties "to cease if the patent is declared void," he must pay the royalties, whether or not the patent is valid for what it distinctly claims, until it is declared invalid in the federal courts: *Ibid*.

As to jurisdiction of courts, see COURTS, §§ 139, 140.

As to estoppel to deny power to contract for sale of patented articles, or to deny validity of patent, see ESTOPPEL, §§ 133, 140, 141.

13. One peddling a patented article cannot complain that the demand of a license fee is an interference with his rights, under the United States statute, to vend a patented article: *Coldwater v. Russell*, 49 M. 617.

14. A state statute requiring notes given for patent-rights to show that fact, and making it a misdemeanor to take or transfer such notes otherwise, is invalid: *Cranston v. Smith*, 37 M. 809.

Further as to note given for purchase price of patent-right, see BILLS AND NOTES, § 183.

As to bids and contracts for laying patented pavement, see CITIES AND VILLAGES, §§ 185, 186, 192; CONTRACTS, §§ 419-421.

Further as to patents, see EVIDENCE, §§ 791, 1163; SPECIFIC PERFORMANCE, §§ 28, 58.

PAYMENT AND DISCHARGE.

I. PAYMENT.

(a) *What constitutes.*

1. In general.
2. What receivable in payment.
3. When bill or note considered payment.

(b) *Proof of payment.*

(c) *Application of payments.*

(d) *Recovery back.*

II. ACCORD AND SATISFACTION.

III. PART PAYMENT.

IV. SETTLEMENT; RELEASE; RECEIPT.

I. PAYMENT.

(a) *What constitutes.*

1. In general.

1. Payment implies a voluntary act of the debtor looking to the satisfaction, in whole or in part, of the demand against him: *Detroit, H. & S. R. Co. v. Smith*, 50 M. 112.

2. An unexplained offer, by the indorser of a note, of the sum due thereon in depreciated bank-bills, is, in legal effect, an offer of compromise, and not of payment, and if accepted operates as a compromise, by way rather of set-off or accord and satisfaction than of payment: *Newberry v. Trowbridge*, 13 M. 263.

3. A deposit of money in a bank to one's own credit, with instructions to the bank officers to apply it on a certain note made payable there, does not place the money subject to the control of the holder of the note, and therefore does not operate as a payment. The bank is not the payee's agent to receive the money unless its officers accept the agency. *Per contra*, their refusal to make payment on demand of the holder is the refusal of the maker of the note: *Pease v. Warren*, 29 M. 9.

4. The maker of a note left money with his bankers, directing them to pay it, and therein making them his agents for that purpose; they gave him credit for it on their books, and sent for and received from the holder the note, indorsed to their order for collection; they did not remit the money, and they let the note remain uncanceled among their collection paper and meanwhile failed. *Held*, that the note was not paid. It had been sent to the bankers for a specific purpose, and no title to it ever passed to them on their own account. They did nothing as agents of the holder: *Sutherland v. First National Bank*, 31 M. 280.

5. Where the face of the note is cut down by way of recoupment the deduction is not to be regarded as a payment, but as so much taken from the face of the note, and a discount is not to be allowed thereon under an agreement for such discount upon sums paid before maturity: *Russell v. Klink*, 53 M. 161.

6. A debtor delivered a horse to his creditor to sell it and apply the proceeds in payment of the debt. The creditor exchanged the horse for other property, and the amount to be applied was disputed. *Held* that, notwithstanding the dispute, the transaction amounted to a payment instead of a mere basis of set-off against plaintiff's claim: *Strong v. Kennedy*, 40 M. 327.

7. Where an account is running between a lumberman and a logger to whom he has furnished teams which the latter is to pay for, the occasional occurrence of a balance in favor of the logger does not necessarily amount to a payment by him for the teams: *Hood v. Olin*, 68 M. 165.

8. Where the nominal payee to whom a subscription is payable is bound absolutely to pay it over to a third person, a payment by the subscriber directly to such third person is valid and will discharge him from further liability: *Erwin v. Lapham*, 27 M. 311.

9. Where mutual cash debtors settle fairly on the principle of compensation, each retaining what he owes the other in payment of what is due himself, these compensations are reciprocal payments: *Connecticut Mutual Ins. Co. v. State Treasurer*, 81 M. 6.

10. An agreement to apply money earned to the extinguishment of an obligation to the employer executes itself and does not require the formality of passing the money back and forth; but these compensations, when they fairly and properly occur, are reciprocal payments: *Roberts v. Wilkinson*, 84 M. 180.

11. A gave a receipt to B. as follows: "I have this day received of B. \$500 in money, a note for \$231, and also an assignment of his interest in a claim against the railroad company to secure the \$269 agreeably to said instrument of assignment, which is in full of all claims and accounts against B. to date." The assignment referred to was a claim of \$875, which by its terms was to be applied on the \$269 when collected. *Held*, that the two instruments taken together did not amount to a payment of the \$269: *Dudgeon v. Haggart*, 17 M. 273.

12. A wife dying, her husband (defendant) and her adult son by a former marriage went together to plaintiff, an undertaker, and gave orders for the funeral; nothing was said respecting payment or who was to be charged. The charge was, however, made to defendant, who refused to pay. Then plaintiff applied to the son, who also refused, but finally lent plaintiff the amount of the bill on the understanding that plaintiff should sue defendant and recover the amount for the lender's benefit. *Held*, that the arrangement was not a payment but was either a loan or a purchase of the demand, and that in either event plaintiff could sue: *Sears v. Giddey*, 41 M. 590.

13. Whether the rule that a party passing negotiable paper warrants its genuineness is applicable to payments made in coin or legal tender notes, *quere*: *Atwood v. Cornwall*, 28 M. 336.

14. Where property is given by a surety in consideration of his discharge from the debt, the principal is not entitled to be credited with the amount as so much paid on the debt: *Peer v. Kean*, 14 M. 354.

15. A vendor cannot dispute that he has received the assignment of a mortgage in payment where the facts are that he himself proposed to accept it as such, and has referred to it in the negotiations as payment, reserving only the right to satisfy himself as to the value of the security; has had a reasonable time and opportunity for making such examination; and has finally notified the purchaser that he must make up any deficiency: *Bulen v. Burroughs*, 53 M. 464.

16. On the question whether payment of notes was intended, the fact that payment would have discharged an indorser, such intent not being shown, is immaterial, because, if the transaction effected the discharge of the indorser, it would have that effect, without any specific intent: *Lange v. Muskegon Booming Co.*, 63 M. 589.

17. Creditors who have received bonds in payment cannot retain them and question their validity or value at the same time; if they wish for a payment in cash they must give up the bonds: *Michigan Air Line R. Co. v. Mellen*, 44 M. 321.

18. A labor contract also bound the employer to rent certain premises to the employee, and provided for monthly settlements of wages and rent. Held that, in a suit for wages due, the amount of rent due might be proved as payment: *Iron Cliffs Co. v. Gingrich*, 42 M. 30.

19. Payment may always be proved as matter of direct defence: *Olcott v. Hanson*, 12 M. 452; *Brennan v. Tietzort*, 49 M. 397.

20. So payment by substitution is matter of defence and open to reply: *Glover v. Dowagiac Universalist Parish*, 49 M. 595.

21. Money paid into court belongs to the plaintiff absolutely; the defendant cannot reclaim it though paid by mistake. So much of the plaintiff's claim is considered as stricken out of the declaration, and he can only recover the balance, if able to prove any; if not, he will be liable to all costs in the further prosecution of the suit: *Phelps v. Town*, 14 M. 374.

Further as to payment into court, see JUS-
TICES OF THE PEACE, §§ 179, 180.

As to when payment to agent is payment to principal, see AGENCY, §§ 52, 53, 63, 69.

2. What receivable in payment.

22. In the absence of special instructions a justice of the peace can receive nothing but

the legal money of the United States in satisfaction of a judgment, nor can a sheriff or constable receive anything else on an execution in his hands for collection: *Heald v. Bennett*, 1 D. 513; *Welch v. Frost*, 1 M. 30.

23. The register of deeds cannot receive a check on a bank in redemption of mortgaged premises. Money alone is receivable: *Woodbury v. Lewis*, W. 256. See MORTGAGES, § 991.

24. A tax collector cannot receive drafts or orders in payment of taxes: *Elliott v. Miller*, 8 M. 132; *Jones v. Wright*, 34 M. 371.

25. The note of a liquor-dealer payable on time cannot be received in payment of a liquor-tax, and is void: *Doran v. Phillips*, 47 M. 228.

26. A certificate of deposit, by its terms made payable in "currency," is *prima facie* payable in what is current money by law or paper equivalent in value circulating in the business community at par; and it is not competent for a witness, without referring to any local custom or usage, to testify that it is payable in depreciated funds: *Phelps v. Town*, 14 M. 374.

27. Where the state land-office commissioner received a draft as money in payment for lands, individuals could not treat this as no payment, there being no showing that the draft was not as good as money: *People v. State Land-Office Commissioner*, 19 M. 470.

28. Where a bill holder presents at one time to a bank for redemption several bills of the denomination of \$5, it is competent for the bank, under the act of congress of Feb. 23, 1853, entitled "An act amendatory of the existing laws relative to the half dollars," etc., to tender payment of the whole sum so presented in half dollars issued under said act: *Strong v. Farmers', etc. Bank*, 4 M. 350.

29. The legal tender act of congress was not designed to confer a personal privilege upon debtors, but was based upon reasons of state policy, which, in the opinion of the law-making power, imperatively demanded that treasury notes should be made equal in legal value to coin; and parties have no right to stipulate that their agreements shall not be governed by it. And therefore, upon a note for the payment of a certain number of dollars in gold, judgment cannot be rendered for a greater sum than the amount specified and interest thereon, notwithstanding it is shown that gold commands a premium in treasury notes: *Buchegger v. Shultz*, 13 M. 420.

That the legal tender act of congress is valid, see CONSTITUTIONS, § 379.

As to payment of costs in national bank notes, see EJECTMENT, § 216.

30. A contract provided that payment should be made in Canada currency or its equivalent in United States money. *Held*, that in an action on the contract there was no ground for an exception to the court's refusal to direct the jury to allow nothing for the difference in the currencies where there was, in fact, no difference between them: *Holland v. Rea*, 48 M. 218.

31. A purchaser who has promised to "settle" on delivery of the goods away from the place of sale, and has allowed the dealers to suppose him to be a cash customer, cannot oblige them to take payment in their own chattel notes payable in such goods deliverable at their place of business. Such notes are not cash and cannot be used as set-off unless their makers are put in default: *Williams v. Jackson*, 81 M. 485.

That agent cannot take anything but money in payment unless expressly authorized, see AGENCY, § 66.

3. When bill or note considered payment.

32. The giving of a promissory note or other security for goods sold is no payment unless it is specially agreed to be so taken: *Gardner v. Gorham*, 1 D. 507.

33. The taking of the debtor's acceptances does not operate as payment of the debt if there is no agreement that they shall be received in payment: *Au Sable River Boom Co. v. Sanborn*, 36 M. 358.

34. A note given for a debt is no payment unless so agreed; its date, therefore, does not necessarily fix that of the debt: *Breitung v. Lindauer*, 37 M. 217.

35. A note given by way of renewal is not a payment. Nor does it amount to a payment for the debtor to discount drafts made by him upon his creditor and accepted by the latter, and to take up outstanding notes with the proceeds if the drafts remain to be met by the drawee: *McMorran v. Murphy*, 68 M. 246 (Jan. 19, '88).

36. A bill or note or other security should be regarded as payment whenever it appears such was the intention of the parties; and that such was the understanding may be proved by their subsequent acts and conduct, as well as by direct proof of an express agreement: *Hotchin v. Secor*, 8 M. 494; *Riverside Iron Works v. Hall*, 64 M. 165.

37. Payment of a bequest may be made by giving a note if the parties agree that the note shall stand as cash: *Van Middlesworth v. Van Middlesworth*, 32 M. 183.

38. Where the vendor of lands takes the note or obligation of a third party for the purchase price, the presumption is that it is taken in payment and not merely as security: *Sears v. Smith*, 2 M. 243.

39. The giving of a note and mortgage for a previous debt does not, as matter of law, discharge the debt unless it is so agreed or understood. But where the evidences of the previous debt are surrendered when new securities are taken, this is *prima facie* evidence of satisfaction, but not conclusive: *Brown v. Dunckel*, 46 M. 29.

40. Where an insurance company takes the notes of some other person than the assured, when the premium falls due, it cannot, as against the assured, insist that they did not amount to payment: *Michigan Mutual Life Ins. Co. v. Bowes*, 42 M. 19.

41. The acceptance of a note for the payment of premiums due on an insurance policy and the giving of a renewal receipt by the company amount to a payment of the premium: *Tabor v. Michigan Mut. L. Ins. Co.*, 44 M. 324.

42. A note which two parties had indorsed for a third being overdue, the holder wrote the indorsers requesting a new note in renewal. They sent one accordingly, made and indorsed by the same parties, and requested the return of the old note. No notice was taken of this request, nor were any steps taken to fix the liability of the indorsers on the new note; but after it fell due suit was brought on the old note, and the new note tendered to the indorsers on the trial, who refused to receive it. *Held*, that plaintiff, by retaining the new note under the circumstances, had made it his own: *Sage v. Walker*, 12 M. 425.

43. Iron was purchased for a corporation, whose president gave his individual acceptance therefor, and received credit for the same on its books. When the draft became due he gave as a substitute for it the corporation's acceptance, due in sixty days, unindorsed by himself. *Held* that, *prima facie*, the acceptance of the corporation was received by the vendor as payment of the president's draft: *Riverside Iron Works v. Hall*, 64 M. 165.

44. Where goods were sold and securities, executed by third persons, were received for the purchase price, one of which the vendor collected, and the other offered to return, it was *held*, in an action brought by the vendor for goods sold, that whether the securities were received by him in payment for the goods sold was a question for the jury, and it was erroneous for the court to exclude evidence offered by the plaintiff from which it might be

inferred that there was no such agreement: *Gardner v. Gorham*, 1 D. 507.

45. A. being indebted to B. gave him an order on C. for the amount of his debt. Three days later B. presented the order to C., who refused payment, and ten days after became insolvent. About four days after B. gave notice of the non-payment to A. *Held*, that B. might recover the debt of A., as there was no unreasonable delay or laches on his part, and no evidence of any injury to A.: *Briggs v. Parsons*, 30 M. 400.

46. Where a corporation gives its paper to a firm which holds orders issued by it, payable in goods, and there is no evidence that the paper was given or received in payment of the orders, the transfer of the paper must be held to be no payment: *Beecher v. Dacey*, 45 M. 92.

47. A man owed debts secured by two mortgages. Wishing to lift them he asked a friend for \$2,000. The friend had let a banker have his money, and as the banker could not conveniently repay more than \$1,000 then, the friend took a certificate of deposit for the other \$1,000 and turned it over to the borrower. The certificate was to fall due when the last remaining mortgage had to be paid, and it was understood that it was to be applied to the payment of that mortgage. This arrangement was acquiesced in so that the lender might, as he required, have all his security in one first mortgage on the land. Before the certificate fell due the banker failed. The borrower then repaid the money actually advanced to him, and tendered the certificate to the lender and demanded the discharge of the mortgage. *Held*, that there had been nothing to show that the borrower had taken the certificate as payment to him of so much money, and he was entitled to the discharge. The loss would fall on the lender: *Burrows v. Bangs*, 34 M. 304.

48. In a proceeding against an estate to recover the amount of a note given by the decedent the fact that since the date of the note the payee has received from decedent checks enough to pay it does not of itself establish the payment of this particular note, nor does it even place upon the claimant the burden of showing that it was not paid: *Smith's Appeal*, 52 M. 415.

49. W. manufactured shingles for M. and agreed to take his pay in shingles or their proceeds. M. sold a quantity and received, besides some cash, a note made payable to W., to whom he turned it over, but refused to indorse it. W. took it on condition that he found the maker to be responsible, but while holding

it the maker failed. *Held*, that W. could not recover the amount of the note from M., but could only claim his *pro rata* share of the cash and available paper received for the shingles: *Mason v. Warner*, 43 M. 439.

50. The note of two of several partners was taken for a partnership debt, and this note was afterwards paid in part, and notes on longer time taken for the balance. Suit being brought against the firm on the original debt, the court was asked by defendants to charge the jury that it was not absolutely necessary to show an express agreement on plaintiff's part to receive the note in payment, but that if the jury find, from all the circumstances of the case, and plaintiffs' subsequent acts in regard to the note, that they had acted and treated it as their own, and as received in payment of their claim, then the jury were authorized to take such facts into consideration, and find that it was received in payment if the evidence satisfied them that such was the fact. *Held*, that this request presented substantially a correct view of the law, and the court erred in declining to charge accordingly: *Hotchin v. Secor*, 8 M. 494.

51. Merchandise was ordered by the firm of S. & G. and was sent with drafts for acceptance by the purchasers. Meanwhile the firm dissolved, and G., who continued in business, stated the fact and asked for new drafts. The vendor replied that he wanted the acceptances of both, and asked an immediate return of the drafts, as he needed them. G. sent his own acceptance instead, and falsely stated that S. had gone east, but that if the drafts were not satisfactory he would obtain an indorser. The vendor replied that he needed the paper at once and retained it. S. knew of this correspondence and kept control of the merchandise until it was closed. *Held*, that as the paper of the only debtor supposed to be within reach was forced upon the vendor, and no offer was made to return the merchandise and there was no apparent means of enforcing any such acceptance as the contract called for, there was no implication from the correspondence of a discharge of the other debtor, and that if there was, it was made nugatory by the fraud of the purchasers: *Case v. Seas*, 44 M. 195.

52. Where a creditor of the firm of F. & S. had, after its dissolution, refused to accept the paper of S. and discharge F., his receiving and retaining what purported to be the paper of the late firm of F. & S., without knowing that it was signed by S. alone in the firm name without authority, is not such an acceptance and discharge, when he had not accepted any paper as payment, nor unduly

delayed enforcing his claim: *Adler v. Foster*, 39 M. 87.

53. Where a firm agreed to settle for merchandise with a note, and after dissolution a partnership note is given by the remaining partner, the other can repudiate his liability thereon, and if he is released the vendor can treat the note as different from that agreed on, and it cannot then be regarded as payment: *Goodspeed v. South Bend Chilled Plow Co.*, 45 M. 237.

54. A. bought out the interest of B., his partner, and gave a cashier security for the firm's indebtedness to the bank for certain discounts, with the private understanding that the cashier should indorse A.'s paper to a certain amount, the indorsed paper to be received in payment of the firm's paper as it matured. In an action by the bank on a note given by C. in renewal of notes made to C. by B. and A., and discounted by the bank, *held*, that no note could be discharged until, by the concurrent action of A. and the bank, the notes indorsed by the cashier were substituted for those of B. and A. to the same amount: *Roberts v. Port Huron Bank*, 41 M. 356.

55. Where the trustee of a vendor of land, while holding the purchaser's bond and mortgage, takes from said purchaser a promissory note for arrears of interest, and bearing higher interest than the bond and mortgage, and then takes a new promissory note for arrears of interest on the former note, and receipts that amount of interest upon the former note, afterwards putting the latter note in judgment, and where, after the mortgage all became due, the purchaser agreed in writing to pay upon the balance from that date a higher rate of interest than was borne by the mortgage, and the former note was accordingly credited as a payment, and the balance made out upon this basis as if the amount had been paid in cash, it was *held* that an intention was clearly indicated to treat the former note as payment, the effect of which would be to detach that amount from the lien of the mortgage: *Burchard v. Frazer*, 23 M. 224.

56. A corporation gave sundry notes to a firm, both supposing that the corporation was indebted to the firm. The firm indorsed the notes and negotiated them to strangers. The corporation made an assignment, and as it failed to pay the notes at maturity, the firm took them up. *Held* that, in an adjustment of accounts between the firm and corporation, these notes should have been credited to the firm leaving the accounts standing as if the notes had not been made. They were not proper charges against the firm until paid by

the corporation: *Blackmar v. Cornwell*, 58 M. 400.

57. By accepting a draft as conditional payment the creditor accepts the duty of doing everything with respect thereto which is necessary to fix the liability of the parties. And the *onus* is upon him to show that he has performed the duty when he seeks to recover upon the original cause of action: *Phoenix Insurance Co. v. Allen*, 11 M. 501.

58. Where one transfers notes to another for property purchased on an agreement that if the notes are not collected the purchaser is to make up the deficiency, the purchaser only takes the notes as conditional payment; and if not paid at maturity he is under no obligation to bring suit upon them, but may immediately sue the purchaser for the amount. (By one justice, two other justices concurring in the result): *Dodge v. Stanton*, 12 M. 408.

58a. The effect of thus receiving notes as conditional payment is simply to postpone payment of the demand on which they are received until the securities fall due: *Ibid*.

59. As to the effect of transfer of funds by a public officer to his successor by means of certificates of deposit, see *Lansing v. Wood*, 57 M. 201.

(b) *Proof of payment.*

60. The burden of proof of payment is on the debtor: *Adams v. Field*, 25 M. 16; *McCabe v. Shaver*, 69 M. 25.

61. Where the payment of an admitted indebtedness is disputed, the burden of proof is on defendant to establish the payment; but where the payment is admitted, and suit is for the amount of it on the ground that it was made in spurious bills, the burden is on plaintiff to prove the character of the bills: *Atwood v. Cornwall*, 25 M. 142.

62. The burden of proving payment of a debt is upon the debtor when in an action to recover upon it the debt has been established by competent evidence: *Smith's Appeal*, 52 M. 415; *Baldwin v. Clock*, 68 M. 201 (Jan. 19, '88).

63. A debtor claimed to have paid a note and then destroyed it. His creditor said he destroyed it without paying. The judge thought the burden of proof, if any, was on the debtor, but charged the jury to determine the question of veracity in view of all the facts. This ruling was approved: *Marvin v. Newman*, 89 M. 114.

64. Proof of payment by defendant of orders drawn by plaintiffs upon him in favor of third persons for articles sold him is suffi-

cient proof of payment to plaintiffs; such payment being in law a payment to plaintiffs: *Webber v. Howe*, 36 M. 150.

65. Presumption of payment can never arise from lapse of time alone, short of the period of limitation fixed by law: *Adair v. Adair*, 5 M. 204.

66. Payment of a demand note is not presumed from the neglect to present it until time enough has passed to outlaw it: *Smith's Appeal*, 52 M. 415.

67. In an action for money had and received upon a draft, evidence that defendant was present when another transferred the draft and received the money upon it was held to authorize the inference of payment of the amount to defendant by such other person: *Bullard v. Hascall*, 25 M. 182.

68. The payee in a check is not to be assumed to have received payment thereon if it is not shown to be indorsed; the fact of payment is for a jury: *Smith's Appeal*, 52 M. 415.

69. Indorsements upon notes, unexplained, prove payment, and, whether explained or not, prove an extinguishment and release of liability to their extent as between the parties, unless it be shown that they were not intended so to operate: *Morris v. Morris*, 5 M. 171.

See LIMITATION OF ACTIONS, § 165.

70. Where the assignment of a partnership interest recites that "the party of the first part, for and in consideration of the sum of \$240, agrees to, and does hereby, sell, assign," etc., and the question is whether the price was not paid at the time of the transfer, it is error to charge that the writing is the only evidence to be considered, and that the law implies from it a promise to pay; the question is one for parol proof, and the writing, standing alone, is entitled to be construed rather as a recital of payment than a promise: *McLouth v. Dibble*, 31 M. 68.

71. The maker's possession of a note is not evidence of payment in an action by him to recover back money claimed to have been paid on it: *Buckley v. Saxe*, 10 M. 328.

72. Where, to prove that he had paid money on a bet, plaintiff produced a note he had given for the same bet, held, that this alone did not prove the payment of money on the bet: *Ibid*.

73. The law does not raise a presumption of non-payment, but of payment when due, unless the contrary is shown: *Bailey v. Gould*, W. 478; *Martin v. McReynolds*, 6 M. 70.

74. A written order directing the drawee to pay what money he has of the drawer's, without specifying any sum, is not of itself proof in the hands of the drawee of the payment of

any sum, but only of authority to pay to the person named in the order: *Beardslee v. Horton*, 3 M. 560.

75. Payment of a bill should be shown by the person who paid it, or by some one who knew the fact, and not by testimony that the witness had caused it to be paid: *Bulen v. Granger*, 56 M. 207.

76. The fact of payment of money may always be proved by parol, whether a receipt was taken for it at the time or not; so of the payment of taxes: *Hammond v. Hannin*, 21 M. 374.

77. Execution was levied on an express package of money sent by the judgment debtor to an agent of his firm to repay advances made by the agent in the interest of principals. The agent brought replevin against the sheriff. Held, (1) that as between these parties the question of defendant's right to seize money in the hands of the express company was immaterial; (2) that, if the money was mutually meant as payment, plaintiff could recover, but if it was meant to be used by the agent in the principal's business he could not; (3) that defendant was not concluded by the concurrent testimony of the consignor and the consignee that it was a payment, but was at liberty to show the contrary if he could. Nor was the jury bound by plaintiff's version: *Nicholson v. Dyer*, 45 M. 610.

78. Where it is found that a payment was made on a mortgage it cannot be presumed, in the absence of any finding as to the date, that it was not made at or near the time when the mortgage fell due: *Albright v. Cobb*, 34 M. 316.

(c) Application of payments.

See, also, MORTGAGES, LX, (a), 2.

As to application of payments upon judgments, see JUSTICES OF THE PEACE, §§ 307-312.

79. A debtor, upon paying money to his creditor, has a right to say on which one of several demands the payment shall be applied: *Thayer v. Denton*, 4 M. 192.

80. A debtor when making a payment has the right to direct its application, and the creditor cannot refuse to apply it accordingly and credit it on some other account: *Michigan Air Line R. Co. v. Mellen*, 44 M. 321.

81. A payment expressly made on a particular assessment must be so applied by the collecting officer: *Fuller v. Grand Rapids*, 40 M. 395.

82. A payment made on undisputed items cannot be construed as applying to a disputed item in the same bill so as to prevent a recovery: *Fish v. Adams*, 37 M. 598.

83. A creditor cannot lawfully pay himself with the debtor's money without the debtor's consent, express or implied; and when the debtor delivers him money for a purpose which negatives the idea of payment, the creditor's control of it is limited to the purpose declared: *Detroit, Hillsdale & Southwestern R. Co. v. Smith*, 50 M. 112.

84. A discharged bankrupt having made occasional payments, both before and after his discharge, upon a running account with a creditor who had not had notice of the bankruptcy proceedings, and was not named as a creditor in the bankrupt's schedules, and having, furthermore, given no direction as to the application of the payments, of which those that were made while proceedings were pending and after the discharge exceeded the cost of the goods purchased during that time, it was held that the creditor might apply the payments to the items first due in the account: *Hill v. Robbins*, 22 M. 475.

85. A creditor having a secured and an unsecured debt may, in the absence of any direction by the debtor, apply a payment upon the unsecured debt: *Wood v. Callaghan*, 61 M. 402.

86. Where one has given an undertaking that, if the person to whom it is addressed will let the bearer have a bill of goods, he will see the amount paid in a reasonable length of time, and the goods are delivered accordingly, the first moneys afterward received by the creditor on the debtor's general account must be applied on the purchase under this guaranty: *Gard v. Stevens*, 12 M. 292.

87. A mortgagee is not bound to apply on the mortgage money received from the mortgager, if he has other occasions to use or apply it; nor would he have any right to apply it on the mortgage before its maturity: *Richardson v. Coddington*, 49 M. 1.

88. The proceeds of a chattel mortgage given to secure several notes held by one party may be applied exclusively to the payment of one of the notes, and need not be distributed: *Wood v. Callaghan*, 61 M. 402.

89. A man who was in debt handed money to his wife telling her to put it in the bank and saying that it would go towards paying the creditor. The wife deposited it, but afterwards withdrew and used it. Held, that the money had not been specifically appropriated to the payment of the debt in any such way as not to remain subject to the debtor's control; and that after his death the creditor could not recover the amount in an action against the wife: *Ryan v. O'Neil*, 49 M. 281.

90. Where the application has been once

made upon a joint debt, it operates to extinguish so much of the debt, and the application cannot be subsequently changed by the concurrent act of the creditor and paying debtor, and the claim thus revived, without the consent of the co-debtor: *Thayer v. Denton*, 4 M. 192.

91. Where debits and credits have been made absolutely, both parties consenting, credits cannot afterward be shifted for the purpose of confining payments to unsecured liabilities: *McMaster v. Merrick*, 41 M. 505.

92. Where parties do not make a specific application of moneys paid, the law will apply it usually as the justice and equity of the case may require: *Youmans v. Heartt*, 34 M. 397.

93. A., having claims against two firms, of each of which B. was a member, took B.'s notes in part payment, indorsed by a third firm of which B. was also a member, and B. having afterwards died, H. presented his claim against the estate of B., crediting the amount of these notes as payment so as to balance one of the accounts, but at the same time submitting a written statement that in presenting his claim as he did he did not waive any rights against the survivors of either of the firms. Held, that considering the manner of submitting this claim against the estate in connection with such disclaimer, it is evident that H. had no intention of making, and did not thereby make, any application of the payment made by the notes: *Ibid*.

94. A trial court having so distributed a payment by notes upon an indebtedness of two firms respectively as resulted in: *pro rata* application upon each, it cannot be said that any error was thereby committed to the prejudice of the survivors of either of said firms: *Ibid*.

As to application of payments on chattel mortgage, see CHATTEL MORTGAGES, § 186.

(d) Recovery back.

95. One cannot ordinarily sue to recover back money voluntarily paid upon a debt: *Brennan v. Tietzort*, 49 M. 397.

96. A voluntary payment cannot be recovered back: *Tompkins v. Hollister*, 60 M. 485.

97. One who voluntarily pays usurious interest cannot recover it: *Gardner v. Matteson*, 38 M. 200.

98. An attorney fee paid under protest on redeeming from a statutory foreclosure may be recovered back: *Vosburgh v. Lay*, 45 M. 455.

99. A common council empowered to audit and allow accounts against the city cannot,

having allowed a person more than he was entitled to, recover back the excess under a claim that it was ignorant, at the time, of facts which it should have investigated: *Advertiser & Tribune Co. v. Detroit*, 43 M. 116; *Perry v. Cheboygan*, 55 M. 250.

As to recovery back of taxes and assessments, see TAXES, VI, (d).

Further as to recovery back of payments, see ASSUMPSIT, §§ 91-114.

II. ACCORD AND SATISFACTION.

100. Where a settlement of an alleged case of fraud is admitted, the controversy being whether it was a full accord and satisfaction, or confined to so much of the property as plaintiff paid for with his own money, and there being no evidence that it was expressly agreed to leave some portion of the controversy outside the settlement, there is no error in charging that if there was a full accord and satisfaction of plaintiff's individual claim, and he released any claim or demand he had in his individual name, there could be no recovery: *Alison v. Connor*, 36 M. 283.

101. A railroad employee injured by a collision continued to accept payment at the usual rate while disabled from pursuing his regular employment. *Held*, that this did not of itself amount to an accord and satisfaction so as to estop him from suing the company for damages: *Hewitt v. Flint & P. M. R. Co.*, 67 M. 61.

102. A man agreed with his daughter-in-law that certain property should be sold and that she should have what was left of the proceeds after certain deductions were made. When the property was sold he directed what should be done with the proceeds, and she received what he gave her. She afterwards brought a claim against his estate based on the agreement. *Held*, that it was not to be inferred from her receipt of the money paid her that she had agreed to take so much in satisfaction of her claim, or that she supposed she was accounting with her father-in-law as strangers would account with each other: *Fraser v. Fraser's Estate*, 42 M. 275.

103. The fact that, before the sale, he had sent her a statement of an account between themselves, containing items not covered by the agreement, would not bind her to the deduction of so much from the amount due her under it, in the absence of evidence that she had examined the account or consented to such deduction: *Ibid*.

104. When a plaintiff in making out a case is compelled to establish an accord which has

to be disposed of, he must show at least *prima facie* that there has been no satisfaction: *Browning v. Crouse*, 43 M. 489; *Harrison v. Gamble*, 69 M. 96.

105. A defendant whose case involves proving an accord must follow it with evidence of satisfaction, or of some legal excuse for its absence: *Ibid*.

106. The next friend of an infant plaintiff cannot bind her by an accord and satisfaction in pursuance of which suit is discontinued, so as to prevent her from bringing another suit on the same cause of action: *Burt v. McBain*, 29 M. 260.

III. PART PAYMENT.

107. A mere agreement to accept a composition, or part of a debt in discharge of the whole, will not operate as a release of the debt if the composition is not duly paid: *Harrison v. Gamble*, 69 M. 96.

108. A debtor compromised with his creditors, but, as he paid the amount of the compromise irregularly, the creditors refused the last tender and sued for the whole debt. Defendant, having paid part and tendered the rest of the amount agreed on, recovered judgment. The tender, however, had not been kept good. *Held*, that the recovery was wrong, and that plaintiffs should have recovered the amount owing under the compromise agreement, with costs: *Browning v. Crouse*, 40 M. 339.

109. In an action on a promissory note the plaintiff had to show, in explaining certain memoranda on the note, that a compromise had been made, but he claimed that as it had been only partly fulfilled he was entitled to recover in full. *Held*, that as he did not show what the terms of the compromise were, or in what the default lay, he was only entitled to recover the amount remaining unpaid on the compromise sworn to: *Browning v. Crouse*, 43 M. 489.

110. Where a party received a note from his debtor, with collateral security, agreeing that, if paid when due, the original debt should be discharged, otherwise of force; and, after the compromise note became overdue, sold and transferred it, with the collaterals and the original debt, it was *held* that he thereby affirmed the compromise, and that the purchaser could not claim the amount of the original debt on the ground of forfeiture of the compromise agreement before he purchased: *Hale v. Holmes*, 8 M. 37.

111. And the collateral security being the note of the purchaser, which became due be-

fore the compromise note did, and was relied upon by the debtor to pay the compromise note, it was held that the purchase must be regarded as a payment of the compromise note by the note of the purchaser, and that the purchaser had no claim, at law or in equity, upon the original debt: *Ibid*.

112. A partial payment or tender of payment is inconsistent with a creditor's rights, and can only be operative when he consents to receive it: *Coots v. McConnell*, 89 M. 742.

113. Payment of a part of a debt actually due, without any *bonus*, is no consideration for an extension of the balance to the debtor: *Briggs v. Norris*, 67 M. 325.

114. A partial payment cannot give validity to a void contract to pay: *Miner v. Lorman*, 56 M. 212.

As to effect of part payment by indorser, see **BILLS AND NOTES**, §§ 120-123.

Part payments or indorsements as preventing outlawry, see **LIMITATION OF ACTIONS**, §§ 159-175.

IV. SETTLEMENT; RELEASE; RECEIPT.

As to consideration for compromise, see **CONTRACTS**, §§ 169-174.

115. One may lawfully settle for that for which he might lawfully recover: *Kreiter v. Nichols*, 28 M. 496.

116. Parties in fiduciary relationship may, if both are of lawful age and sound mind, make amicable settlements of their accounts. Settlements of fiduciary matters, though scrutinized more closely than others, are not void: *Hooper v. Hooper*, 26 M. 435.

117. A father's settlement with his son for services rendered after the latter had reached his majority, and the transfer of property made in satisfaction, will not be disturbed in favor of the father's administrator, when there is no proof of fraud or undue advantage. Such settlements are not to be discouraged: *Boven v. Lockwood*, 26 M. 441.

118. A fair settlement of conflicting claims is binding upon the parties, even though they may have yielded legal rights: *Converse v. Blumrich*, 14 M. 109.

119. A complainant on a bill for an accounting, having intelligently accepted a fair payment as a full settlement of all claims, ought not to be permitted to repudiate the settlement: *Eccard v. Brush*, 48 M. 3.

120. The courts will not go back of the deliberate compromise of an apparently *bona fide* claim to inquire into the reasonableness of the compromise or the merits of the disputed claim: *Hull v. Swarthout*, 29 M. 249.

121. The law will not look too closely into such arrangements as the parties themselves choose to consider satisfactory, but in the absence of fraud or mistake will encourage parties to settle their own contracts: *Moore v. Detroit Locomotive Works*, 14 M. 266.

122. Courts cannot disturb a compromise between parties unless on satisfactory evidence of mistake, fraud or unconscionable advantage: *Prichard v. Sharp*, 51 M. 432; *Hart v. Gould*, 62 M. 262.

123. Defendant charged complainant with intentionally burning his own mill, and claimed payment for wheat belonging to defendant which was destroyed with the mill, and complainant gave his note and mortgage for the value of the wheat. On bill filed by complainant to set aside these securities as obtained through threats, fear and duress, it is not necessary for the court either to find that complainant burned his mill or to grant the relief asked; for the settlement must stand if there was no fraud or undue advantage taken to bring it about, and defendant had reason to believe the charge, and did not manufacture it to frighten complainant into a settlement: *Gates v. Shotts*, 7 M. 127.

124. An agreement to settle an existing suit is sustainable without reference to the merits of the controversy, unless under very peculiar circumstances; and it has the same rule of consideration that applies to other contracts: *Sanford v. Huxford*, 32 M. 313.

125. Where parties have agreed to a settlement of an existing lawsuit, and put it in writing and signed it, such arrangement must stand until set aside for such frauds as should vitiate it, upon a rescission attempted as soon as practicable after the fraud is known, and with no lack of diligence in discovering it: *Lewless v. Detroit, Grand Haven & M. R. Co.*, 65 M. 292.

126. In the absence of fraud, duress or oppression a client's settlement with an attorney for moneys collected and in the latter's hands subject to a lien for services is binding: *Dowling v. Eggemann*, 47 M. 171.

127. It is against public policy to permit a party to a written settlement to contest his liabilities thereunder on the ground that he had fraudulently contrived it for the purpose, merely, of screening his property from justice: *Bassett v. Shepardson*, 52 M. 3.

128. There can be no settlement, in the legal sense, where one of the parties surrenders a right that he claims, under protest, and with the understanding that he reserves his defence to any claim upon it: *Jennison v. Stone*, 33 M. 99.

129. Where the victim of a railroad accident, after settling her claim for damages, repudiated the settlement for fraud, and sued the company for the injury, a request to charge that an acquiescence in the settlement by using the money or any portion of it after the discovery of the alleged fraud would defeat the plaintiff's right of action was modified by adding the proviso "unless you find that she made a tender or returned the money, or offered to make a tender and was prevented from completing it by the acts of defendant or its agents;" *held* not error, the addition being necessary to prevent the inference to which the request was open, that a use of the money, although the defendant had refused to receive it back, would operate as a waiver of the fraud and an affirmation of the settlement: *M. C. R. Co. v. Dunham*, 90 M. 128.

130. Where the adverse party upon rescission of a settlement is only entitled to a refunding of money, and no action or right is otherwise involved, a delay of only three days, even with the fullest knowledge, would be immaterial as bearing on the question of acquiescence or of waiver of fraud: *Ibid*.

131. Where a mining company instituted a fund for the relief of injured workmen, to which fund plaintiff and the company contributed, and it was made a condition that an injured person receiving aid from such fund should sign a receipt releasing the company from all claims for damages on account of the injury, *held*, where plaintiff was injured through the company's negligence, that the release was no bar to a suit for damages, unless it appeared that he was fully informed or had knowledge of the fact of the company's negligence, and of its liability to him therefor, and fully understood that, by signing such agreement, he was thereby releasing the company from all liability to him arising from such negligence: *O'Neil v. Lake Superior Iron Co.*, 63 M. 690.

132. An alleged compromise may be contested by showing that the party relying on it had acted unfairly or oppressively, and asserted claims which he knew to be wrongful, for the purpose of getting the terms which have been nominally assented to: *Headley v. Hackley*, 50 M. 48.

133. A settlement in a grossly inadequate sum for negligent injuries obtained by a railroad company through representations that plaintiff "would be disgraced if she appeared in court in such a matter, and would get nothing in the end," and at a time when she was in a sick and nervous state and in great need of money, *held*, having been repudiated the

next day, no bar to an action for the injury: *Stone v. Chicago & W. M. R. Co.*, 66 M. 76 (May 5, '87).

Compromise or settlement as affected by unfairness, oppression or duress, see CONTRACTS, §§ 122, 123, 125-127, 552, 553.

134. A settlement of previous accounts is not to be conclusively presumed from the giving of a note by one party to another. Whether it furnishes a *prima facie* presumption or is only a question for the jury, *quere*: *Cotherman v. Cotherman*, 58 M. 465.

135. A settlement of accounts between parties is *prima facie* a settlement of all accounts; but where there is evidence tending to show that a certain item was excluded in the settlement, it is a proper question for a jury to determine what was settled: *Bourke v. James*, 4 M. 386.

136. It is always competent to show, by any relevant testimony, what items enter into a settlement when an item sued for is claimed to be barred by the settlement: *Hicks v. Leaton*, 67 M. 371.

137. A receipt which states its purpose to be for a complete settlement, and which covers the whole period of dealing, is equivalent to an account stated; and though it is open to explanation as to errors or omissions, it cannot be treated as if it had not been meant to cover everything: *Houghton v. Ross*, 54 M. 335.

138. A settlement between parties by "jumping accounts," and receipting accordingly, does not, of itself, and without evidence that such was the intent, include items for money afterwards paid by one on account of claims against them jointly, notwithstanding such claims originally accrued before the settlement: *Whipple v. Parker*, 29 M. 369.

139. W. having agreed to ship a quantity of pig iron for M., L. & M., together with some of his own, sent it all in his own name to a Cleveland firm and gave M., L. & M. a paper certifying that 884 tons was iron on which they had a first lien, and that all it brought over and above the amount due them, and the charges, was to go to pay his own lien. Nothing being received from the consignees, W. gave M., L. & M., at their request, an order on the firm for the iron, and notified the firm to settle with M., L. & M. without recourse to him. M., L. & M. then gave up the former certificate to W. They afterwards sued him in *assumpsit* for damages sustained from his failure to perform the agreement under which he had forwarded the iron for them, and the evidence was conflicting as to the nature of the arrangement under which the iron was re-

ceived and shipped, and as to whether there was an absolute agreement for advances to be paid M., L. & M., and whether such advances as W. had received were on the whole mass of iron or in answer to drafts on specified lots of his own. *Held*, that a ruling that the reception by M., L. & M. of the order on the firm was a final settlement as between the parties, and left M., L. & M. to their remedy against the firm, could not be sustained, and that the plaintiffs were entitled to have the evidence submitted to the jury under proper instructions: *Maas v. White*, 37 M. 128.

140. It is the intention of the parties to an account that has not been paid in full which determines whether an alleged settlement was meant to dispose of the entire account: *Widner v. Western Union Telegraph Co.*, 51 M. 292.

141. A debtor enclosed a check in a letter of transmittal which was merely a printed form with the blanks filled out in writing and containing the printed words "in settlement of account." The letter also enclosed a receipt in similar form and with the same printed words. The creditor refused to sign this receipt, but gave an ordinary receipt in place of it without objection from the debtor. Further payments were made before the completion of the contract, and the creditor frequently demanded full payment after the check was received, and at such times the debtor made no claim of a settlement. *Held*, that the words "in settlement of account" meant no more than "applied on the account:" *Ibid*.

142. An agreement reciting that "the parties hereto, being desirous of settling all matters of difference between them, of whatever name or nature, have agreed as follows," etc., "and it is further mutually agreed that the parties hereto shall meet . . . on Thursday to execute necessary papers to carry out and fulfil the terms of this agreement," is complete in itself and needs no explanation; and where it has been executed and performed, neither party can be heard to contend that it was only a partial settlement and did not include a matter in suit: *Freeman v. Freeman*, 68 M. 28.

143. Any item presumably covered by a settlement, though not specifically mentioned, is properly disallowed by a referee on accounting: *Mason v. Peter*, 58 M. 554.

144. If a vendor accepts, negotiates and cashes a check which purports on its face to be in full payment for the merchandise sold, he, in effect, receipts in full for the price: *Peter v. Thickstun*, 51 M. 590.

145. Passing receipts is not conclusive evidence of settlement: *Vyne v. Glenn*, 41 M. 112.

146. Receipts in full are not conclusive upon the parties to a settlement: *Hicks v. Leaton*, 67 M. 371.

147. A receipt or acknowledgment of payment is not conclusive evidence of the fact: *McAllister v. Engle*, 52 M. 56.

148. A receipt obtained by improper means and assuming to discharge any indebtedness not honestly in dispute between the parties, and known by the debtor to be owing, is to that extent without consideration and ineffectual: *Hackley v. Headley*, 45 M. 569.

149. A receipt signed in ignorance of the debtor's failure to account for certain moneys concerned does not prevent the signer from recovering them: *Hart v. Gould*, 62 M. 262.

150. Whether, in case of a railroad injury, a receipt "in full for all damages or injuries resulting from said accident to us or either of us," etc., attached to a statement of account in the form of a bill reciting the accident, and signed by the plaintiff and her husband, would be, in the absence of fraud, or of any facts impeaching its validity, an absolute bar to the plaintiff's right of action for the injury, *quere*: *M. C. R. Co. v. Dunham*, 30 M. 128.

151. A receipt given by the register of deeds is not conclusive evidence as against a purchaser of the payment of redemption money to him: *Woodbury v. Lewis*, W. 256.

That a written receipt may be contradicted by parol evidence, see EVIDENCE, §§ 1289-1295.

152. An agreement by a creditor with his debtor to discharge his demand at a future day cannot be treated as an absolute discharge as against third persons whose rights intervene, where it appears that there was such a failure in the consideration for the agreement as would entitle the creditor to treat it as void: *Stone v. Welling*, 14 M. 514.

153. An agreement not to sue upon a particular demand operates as a release: *Robinson v. Godfrey*, 2 M. 408; *Morgan v. Butterfield*, 3 M. 615.

154. A debtor is not discharged by the fact that his creditor knows that a third person has engaged to pay the debt, unless the creditor has accepted such third person as debtor in his place: *Blanchard v. Tittabawassee Boom Co.*, 40 M. 566.

155. Assumption of debts by a third person does not discharge the debtor from liability to his creditor; *Johnson v. Fowler*, 68 M. 1 (Jan. 5, '88).

155. But payment made on behalf of a party by some one else may be adopted by the debtor, and an arrangement to accept the debtor's debtor may be valid if clearly made

out, nor need it be in writing: *Glover v. Dowagiac Universalist Parish*, 48 M. 595.

157. S. owed C., and C. owed D. S. agreed to "become responsible" for C.'s debt to D., and obtained an extension of the time for payment. *Held*, that this arrangement did not discharge C., who was no surety, and who was in no way prevented from paying his debt at maturity: *Dennis v. Sharer*, 56 M. 235.

158. One who is jointly liable with the lessees for the payment of rent under a lease upon the lessees' default is not discharged by an agreement to which he is not a party, to reduce the rent, subsequently entered into by the lessors with the lessees: *Preston v. Huntington*, 67 M. 139.

Effect of release of a joint debtor in another state, see CONFLICT OF LAWS, §§ 17, 18.

PERJURY.

See CRIMES, III, (e), 1.

PHYSICIANS.

- I. GENERAL MATTERS.
- II. PRIVILEGED COMMUNICATIONS.
- III. DEGREE OF SKILL; MALPRACTICE.
- IV. COMPENSATION.

I. GENERAL MATTERS.

That act 167 of 1883, regulating the practice of medicine, is valid, see CONSTITUTIONS, §§ 142, 582.

As to complaint under said act, see CRIMES, § 667.

1. Whether one is a practicing physician within the meaning of the exemption laws (see EXECUTIONS, § 65) is a question relating rather to the business in which he is engaged than to the degree of skill with which he exercises it; though some degree of skill is necessary: *Sutton v. Facey*, 1 M. 243.

2. Proof of plaintiff's having practiced as a physician is *prima facie* evidence of his professional character: *Ibid*.

3. And after such a *prima facie* case has been made out, a witness may be asked "was the plaintiff skilled in healing?" for the purpose of showing that the plaintiff had no knowledge of the healing art: *Ibid*.

4. That one has held himself out as a medical practitioner may be shown by evidence that he exhibited a sign as "Dr. —, Magnetic Healer," that he was called to visit sick persons and treated them, that he made a cer-

tificate of death and swore to a medical practitioner's statement, and by such certificate and statement and a report by him executed of infectious diseases: *People v. Phippin*, 70 M. 6.

5. Where a physician takes an unmarried layman with him to attend a case of confinement, and no real necessity exists for the latter's assistance, both are liable in damages; and it makes no difference that the patient or husband supposed at the time that the intruder was a medical man, and therefore submitted without objection to his presence: *De May v. Roberts*, 46 M. 160.

6. In such a case plaintiff may testify that she supposed the intruder was a physician or a medical student, and may show whatever was said at the time tending to support such supposition. And a competent witness may be asked as to the custom in regard to calling assistance in cases of confinement: *Ibid*.

As to tenure of city physician, see OFFICERS, § 44.

Libellous charge against city physician, see LIBEL, § 27.

As to evidence of medical standing, in action for libel, see LIBEL, § 85.

As to evidence of method of securing practice, see FALSE IMPRISONMENT, § 47.

As to agreements not to practice, see CONTRACTS, §§ 296, 407.

As to physicians' testimony as experts, see EVIDENCE, §§ 109, 585-593, 614-617, 628, 629, 634-654, 658, 667, 679, 681.

II. PRIVILEGED COMMUNICATIONS.

7. A physician has no right to publish matters of professional confidence without the approbation of the person concerned: *Sullings v. Shakespeare*, 46 M. 409.

8. Physicians have no common-law privilege exempting them from testifying to facts learned in the confidence of their professional relation: *Campau v. North*, 39 M. 606.

9. It is not competent for a physician or surgeon to testify to facts which have been communicated to him for the purpose of enabling him to perform his professional duty, or which were in any way brought to his knowledge for that purpose: *Briggs v. Briggs*, 20 M. 34; *Storrs v. Scougale*, 48 M. 388.

10. The statutory rule of exclusion is for the patient's benefit and not the physician's, continues in force indefinitely, and can only be waived by the patient: *Storrs v. Scougale*, 48 M. 388.

11. A physician's testimony as to information acquired while attending a patient can-

not be excluded unless it appears that he needed it to enable him to prescribe for the patient: *Campau v. North*, 89 M. 606.

12. Damages were claimed for a physical disability alleged to have been caused by defendant's violence. *Held*, that the testimony of plaintiff's physician that plaintiff had admitted to him that the disability had existed before the act of violence could not be excluded if it did not appear that the patient's disclosure was necessary to enable him to prescribe: *Ibid*.

13. Physicians' testimony as to the condition of sick persons is admissible where no confidential relations are violated in giving it: *Scripps v. Foster*, 41 M. 742.

14. A physician may properly testify, with his patient's consent, to the date of a visit made him by the patient and the subject of the consultation, details not being given, and the date being only material to fix the time of other events: *Dalman v. Koning*, 54 M. 821.

15. Deceased having stated in an application for an insurance policy that a certain doctor had treated her for typhoid fever, *held*, that in an action on the policy he was not precluded from answering defendant's question whether he had or had not done so: *Brown v. Metropolitan Life Ins. Co.*, 65 M. 306 (April 14, '87).

16. The privilege does not extend to cases where no confidential relations exist: *People v. Glover*, 71 M. — (July 11, '88).

17. So in a prosecution for raping a girl under the age of consent, where the state seeks to show that the girl thereby contracted a venereal disease, an examination of the accused made with his consent while he was in jail, by physicians, at the instance of the prosecuting attorney, may be testified to by such physicians: *Ibid*.

18. The statutory rule of exclusion is solely to enable persons to secure medical aid without betrayal of confidence; it only establishes a privilege which the patient may waive: *G. R. & I. R. Co. v. Martin*, 41 M. 667; *Scripps v. Foster*, 41 M. 742; *Fraser v. Jennison*, 42 M. 206.

19. Those who represent the patient's interests after his death may waive the privilege, so that the proponents of a will may show the testator's competency by the testimony of his physician: *Fraser v. Jennison*, 42 M. 206.

III. DEGREE OF SKILL; MALPRACTICE.

20. A physician must exercise reasonable skill, taking into account the advancement of

professional learning, but a charge that he must exercise such skill as is ordinarily exercised by educated physicians, without further defining it, is incorrect: *Hitchcock v. Burgett*, 88 M. 501.

21. That one has had the management of a farm owned by him, but has not personally been largely engaged in farming affairs, does not tend to show general incompetency to practice the profession of surgery: *Mayo v. Wright*, 63 M. 82.

22. The fact that a surgeon changes a course of treatment adopted by another does not in itself show that the former course of treatment was not proper at the time: *Wood v. Barker*, 49 M. 295.

23. A patient's failure to recover perfect soundness of limb is not in itself evidence of malpractice, nor is the fact that he survived, although he refused to allow a particular course of treatment, evidence that such course might not have been proper under the circumstances: *Ibid*.

24. The jury, in such a case, cannot find malpractice without testimony from persons qualified to give opinions on methods of treatment: *Ibid*.

25. The jury cannot be allowed to determine for itself the correctness of a physician's treatment of a fractured limb; and it was *held* proper to refuse to permit a defendant sued for medical services to exhibit the limb to the jury long after the injury had healed: *Carstens v. Hanselman*, 61 M. 426.

26. In an action for malpractice it was *held* that the evidence tended to show such a total want of skill, and such a degree of carelessness, on the part of defendant, a physician (who was employed to remove a tumor from a woman's uterus), as would in law make him guilty of manslaughter: *Hyatt v. Adams*, 16 M. 180.

27. If a family doctor or railway surgeon on leaving town recommends, in case of need, some other physician, who is not, however, in any sense in his employment, it does not make him liable for injuries resulting from the latter's want of skill in case he should be employed: *Hitchcock v. Burgett*, 88 M. 501.

28. Exemplary damages are not recoverable for malpractice where there was no evil motive in the defendant's conduct: *Hyatt v. Adams*, 16 M. 180.

See, also, as to damages, DAMAGES, §§ 82, 84, 845.

As to declaring for malpractice, see PLEADINGS, §§ 250-252.

As to evidence in cases of malpractice, see EVIDENCE, §§ 84, 190, 348, 351, 352, 355, 561, 652.

IV. COMPENSATION.

29. There is no presumption of law as to the value of a surgeon's services; a jury cannot ascertain the value without testimony from competent persons, nor can a jury reduce the compensation claimed for such services where undisputed testimony shows it to have been appropriate, on the ground, unsupported by evidence, that plaintiff's treatment was improper: *Wood v. Barker*, 49 M. 295.

30. A physician's average daily receipts do not measure the value of his services so as to exclude competent opinions as to such value: *Thomas v. Caulkett*, 57 M. 392.

31. Where, in a physician's suit for services, the defence is made that by a special agreement pay was to be contingent on a cure, and that there was no cure, defendant's financial condition is irrelevant in determining whether such a bargain was made: *Hollywood v. Reed*, 55 M. 308.

32. Under such an agreement the material questions would be whether a cure was effected by plaintiff; the nature of the disease is not material either under plaintiff's or defendant's theory; and the record of divorce proceedings between the defendant and his former wife is irrelevant: *Hollywood v. Reed*, 57 M. 284.

33. Where a doctor was employed by one who had been injured in a railroad accident to explain his injuries to the company's management, on the secret understanding that his services should be paid in proportion to the amount recovered, such bargain was held void as against public policy: *Thomas v. Caulkett*, 57 M. 392.

As to compensation of physician hired by BOARD OF HEALTH, see that title, § 6.

PLANK-ROADS.

I. IN GENERAL.

II. ERECTION AND REMOVAL OF TOLL-GATES.

III. RIGHT TO DEMAND TOLL; FORFEITURE.

IV. ILLEGALLY PASSING TOLL-GATES.

V. EXACTING EXCESSIVE TOLL.

VI. MORTGAGE AND SALE OF FRANCHISES.

VII. LIABILITY OF STOCKHOLDERS.

I. IN GENERAL.

1. The provision in § 50 of the general plank-road act of 1851 (H. S. § 3645) that any subsequent alteration or amendment of the act shall not operate as an alteration or amendment of the corporate rights of com-

panies formed under it, unless specially named in the amendatory act, was inserted solely for the protection of the companies, and does not prevent the legislature, by general amendment, from removing any restriction, or releasing or diminishing any obligation or burden imposed upon such companies by the general act: *People v. Grand B. & H. P. R. Co.*, 10 M. 400.

2. Therefore companies formed under said act may, as to the road subsequently constructed, claim the benefit of the act of 1859 (H. S. § 3623), which permits them to adopt a grade not exceeding one foot in ten, instead of one foot in twenty, as under the general act: *Ibid.*

3. In 1848 a plank-road company received a special charter which declared the general law of 1848 concerning such companies to form a part of it. The charter was made to continue sixty years, and could only be altered or amended after thirty years, unless it was made to appear to the legislature that the charter had been violated. In 1855 another act was passed relating to such companies which repealed certain provisions of forfeiture in the law of 1848, but made no other reference to it. Act 289 of 1875 (H. S. §§ 3649-3651) amended the act of 1855, prescribing new causes of forfeiture, and providing a new remedy in equity to enforce forfeiture. *Held*, that the act of 1875 was not applicable to the company in question, and that no amendment made earlier than 1878 could operate on its charter: *Tripp v. Pontiac & L. P. R. Co.*, 66 M. 1.

4. Section 4 of the charter of the Detroit and Howell Plank-road Company (Laws 1848, p. 398), authorizing the company, when duly organized, to enter upon and take possession of so much of the Detroit and Grand River road, so called, as lies between the city of Detroit and Howell, was held to dispense with the necessity of a release or consent of the supervisors and commissioners of highways of the several townships, as required by § 27 of the general act of 1851 (H. S. §§ 3597-3647): *Detroit & H. P. R. Co. v. Fisher*, 4 M. 87.

5. The Detroit and Erin Plank-road Company, being specially authorized by its charter to take possession of so much of the Fort Gratiot road as lies between the city of Detroit and the township of Erin, and construct and maintain a plank road thereon, it was held that it might do so without any grant or release from the supervisor and commissioners of highways of the township through which the road would run, notwithstanding the general act of 1848 (H. S. § 3566 *et seq.*) was also

made a part of the charter, and by that act, where a plank-road company might wish to use a public highway for their road, they were to obtain the right by procuring a grant for the purpose from the officers mentioned: *Attorney-General v. Detroit & E. P. R. Co.*, 2 M. 138.

6. Independently of statute or charter it is the duty of a plank-road company having exclusive control of a highway to protect the public by railings or fences against dangerous embankments: *Carver v. Detroit & S. P. R. Co.*, 61 M. 534; See S. C. 69 M. 616.

II. ERECTION AND REMOVAL OF TOLL-GATES.

7. A plank-road company has general power to change the location of its gates, and to erect new ones, unless specially restricted: *Detroit v. Detroit & E. P. R. Co.*, 12 M. 383.

8. A plank-road company, occupying for its purposes a road leading from the city of Detroit, procured an amendment to its charter, by which it was "empowered to extend their road on Gratiot street to Randolph street in the city of Detroit; provided that no toll-gate shall be erected or maintained within the limits of said city by said company." Subsequently the city limits were extended by statute so as to embrace a portion of the original road upon which a gate had before been erected. It was *held* that the amendatory act did not restrict the original powers of the company to erect and maintain a gate on any portion of the road then outside the city limits, but only prohibited any gate upon the extension of the road which was authorized by the amendatory act: *Ibid*.

9. The charter of a plank-road company authorized it to erect toll-bridges at its discretion, provided none should be placed within the limits of the city of Detroit. *Held*, that the charter contemplated the then existing city limits, and that the later extension of the limits beyond a gate did not diminish the company's franchise nor make the gate a nuisance, or compel the company to remove the gate: *Chope v. Detroit & Howell P. R. Co.*, 37 M. 195, 43 M. 140.

10. A charter to construct a plank-road from one city to another city or place does not authorize the company to erect its toll-gate and exact tolls upon one of the streets of the city; nor can user establish such a right: *Pontiac & L. P. R. Co. v. Hilton*, 69 M. 115 (March 2, '88).

That a statute requiring removal is invalid, see CONSTITUTIONS, § 57.

III. RIGHT TO DEMAND TOLL; FORFEITURE.

11. Under the provisions of section 17 of the general plank-road act of 1848, a company may exact toll whenever the road, or five consecutive miles thereof, are completed, notwithstanding the survey of the road is not recorded as directed by section 12 of said act: *Detroit & H. P. R. Co. v. Fisher*, 4 M. 38.

12. The company may demand toll of any person in advance of his actually travelling upon the road; and on his refusal to state how far he proposes to travel over the road may require payment of toll to the next gate: *Ibid*.

13. H. S. § 3649, providing a remedy by suit in chancery against a plank-road company attempting to collect toll while its road is defective or out of repair, was not repealed by H. S. § 1369, which imposes upon the highway commissioner the duty of seeing that all such companies maintain their roads in as good and safe condition as he is required to keep the public highways, and subjects such companies to a penalty of \$50 for every failure to repair defects when ordered by him: *People v. Grand Rapids & W. P. R. Co.*, 67 M. 5.

14. In a suit under H. S. § 3649, against a plank-road company, an injunction restraining the company from taking toll is properly refused where it appears that since the filing of the bill defendant has at great expense put its road in the condition required by law: *Ibid*.

15. Bill *held* to state a case for equitable relief, under H. S. § 3649, against a plank-road company whose road is out of repair: *Ibid*.

16. Under the plank-road act of 1848, on the completion of five consecutive miles of plank-road, the right to take tolls became vested; and whatever might be the length of the road required by the charter, the right to tolls on the part so completed could not be forfeited or affected by the failure to construct the balance of the road: *People v. Jackson & M. P. R. Co.*, 9 M. 285.

17. The following question discussed but not decided—the court being divided in opinion: Where a part of the road actually completed is constructed in a manner not allowed by the said act of 1848, is this such a misuser as will forfeit the whole grant? *Ibid*.

18. Also, under said act of 1848, can the five consecutive miles of road first constructed be forfeited by a failure to keep any other portion of the road, when constructed, in repair? *Ibid*.

19. Also, what certainty of pleading is re-

quired in a proceeding to have a forfeiture declared for misuser? *Ibid.*

20. Also, what standard of perfection can be required as the standard of repairs, and when repairs must be made? *Ibid.*

21. Where a company's road is for six years out of repair in its whole length, and unsafe for vehicles, negligence may be presumed against the company, and the fact justifies a forfeiture of its corporate rights and franchises and a judgment of ouster: *Coon v. Plymouth P. R. Co.*, 32 M. 248.

That forfeiture must be judicially declared, etc., and as to repeal or amendment of charter, see CONSTITUTIONS, §§ 441-446.

IV. ILLEGALLY PASSING TOLL-GATES.

22. Where the traveller, without paying the legal toll, passes the gate against the express will or order of the gatekeeper, but without actual force, the gate being open and the keeper offering no resistance, such an act constitutes a forcible passing under H. S. § 3582: *Detroit & H. P. R. Co. v. Fisher*, 4 M. 88.

23. In an action by a plank-road company for the penalty provided by H. S. § 3582, for forcibly passing its toll-gate without paying, defendant cannot show that the company had agreed with an alderman to stop taking toll if the alderman would procure certain legislation which it wanted. And it is no defence that defendant thought the gate was illegal: *Detroit & S. P. R. Co. v. Mahoney*, 68 M. 265 (Jan. 19, '88).

24. An action to recover a penalty for illegally passing plaintiff's toll-gate involves neither the existence of plaintiff as a corporation nor the exercise of a corporate franchise: *Pontiac & L. P. R. Co. v. Hilton*, 69 M. 115 (March 2, '88).

25. Plaintiff suing to recover a penalty for illegally passing a toll-gate has the burden of proving the existence of such a state of facts as entitles him to enforce the penalty: *Ibid.*

V. EXACTING EXCESSIVE TOLL.

26. H. S. § 3636, imposing a penalty upon gate-keepers for exacting *excessive* toll, does not apply to a case where it is claimed that he is not entitled to take toll at all and where the question of his right to collect is purely legal: *Van Buren v. Wylie*, 56 M. 501.

27. A toll-gate keeper cannot be held liable under H. S. § 3636 for taking illegal toll, unless he took it knowing the number of miles travelled or to be travelled on the road by the

person paying the toll: *Fox v. Francher*, 66 M. 536.

28. H. S. § 3636 does not apply to plank-road companies organized under the laws of 1848, but only to such companies as should be organized after the act of 1851, of which said § 3636 forms a part, became a law: *Ibid.*

VI. MORTGAGE AND SALE OF FRANCHISES.

29. A special statute (the act of April 3, 1851) authorizing a plank-road company to mortgage its road is not in conflict with the constitutional provision prohibiting the legislature from authorizing the sale of any real estate of any person by private or special law, but is to be regarded as an amendment of the company's charter: *Joy v. Jackson & M. P. R. Co.*, 11 M. 155.

30. An amendment to a charter of a plank-road company, authorizing it to mortgage its corporate property to raise money for the completion of its road, is an amendment which may be accepted by a majority of the stockholders: *Ibid.*

31. Under a special statute authorizing a plank-road company to "mortgage the road and other property of the company," the franchise of taking toll is to be understood as included with the road and its fixtures: *Ibid.*

32. But the company could not, under this power, mortgage any franchise essentially corporate in its character, and which could not be enjoyed by a natural person: *Ibid.*

33. Under an authority to mortgage the whole road the company might give a valid mortgage on any specific portion of it upon which separate tolls can lawfully be collected: *Ibid.*

34. Whether a plank-road company has power, irrespective of statute, to mortgage its corporate property and franchises, *quere*: *Ibid.*

35. The authority to sell the franchise of a plank-road corporation on execution is derived entirely from the statute; and the sale can be made in no other mode than that pointed out by the statute. That mode is a sale of the franchise to such person as will satisfy the execution, with the legal fees, and take the franchise for the shortest period of time: *James v. Pontiac & G. P. R. Co.*, 8 M. 91.

36. A sale of the franchise for a certain period, in part payment of the execution, is unauthorized and void: *Ibid.*

37. The acquiescence of the stockholders in the purchaser taking possession under such a sale, their payment to him of tolls for passing

over the road, and the expenditure by him of moneys in repairing the road, with their knowledge, will not confirm and render valid such a sale: *Ibid.*

VII. LIABILITY OF STOCKHOLDERS.

38. The signing of the articles of association and subscription for stock of a plank-road company, under the act of 1851 (H. S. § 8627) imported a promise to the company to pay the amount of such subscription when called in, although the instrument contains no express promise to that effect: *Dexter & M. P. R. Co. v. Millerd*, 8 M. 91.

39. The notice that directors of plank-road companies give under H. S. § 8627, that payment is required for stock subscribed for, must specify the place where the payment should be made: *Ibid.*

40. Stockholders in a plank-road company organized under the general plank-road act of 1851 are severally liable for demands against the company (not for labor done) to the amount of the stock held by each when the debt accrued, and not merely for the amounts which remain unpaid on their stock: *Pettibone v. McGraw*, 6 M. 441.

PLATS.

- I. GENERAL PRINCIPLES.
- II. ACKNOWLEDGMENT AND RECORD.
- III. VACATION OF PLATS.

I. GENERAL PRINCIPLES.

1. No plat can be made except by the proprietor: *Lee v. Lake*, 14 M. 12; *Lothrop v. Board of Public Works*, 41 M. 724.

2. An administrator cannot make a public plat of his intestate's lands under a probate license to sell them: *Lothrop v. Board of Public Works*, 41 M. 724.

3. The proprietor of lands bordering on a meandered stream may extend his plat to the channel bank: *Twogood v. Hoyt*, 42 M. 609.

4. Where lands are platted into lots, with shore boundaries marked, conveyances with reference thereto carry the submerged land to the center of the stream: *Watson v. Peters*, 26 M. 508; *Fletcher v. Thunder Bay, etc. Boom Co.*, 51 M. 277.

And see *WATERS*, VI, (a).

5. The owner's certificate, appended to a plat, and explaining dimensions, courses and distances not otherwise made clear, is a proper part of the plat and should be read with it. This being done, a square intended to be dedi-

cated to the public was held sufficiently identified: *Baker v. Johnston*, 21 M. 819.

6. Where in platting a village it turns out that by mistake the blocks are not so long as the plat represents, the deficiency must be apportioned between the lots of the block according to their apparent size as shown by the map: *Quinnin v. Reimers*, 46 M. 605.

6a. And this rule will be applied notwithstanding the explanations upon the plat state that all lots are of full size except those made fractional by a named street; it appearing that according to the plat such street made certain lots fractional, and such last-mentioned lots evidently being all the explanations intended to except: *Ibid.*

7. The healing effect of H. S. § 1487 is confined to imperfect acknowledgments; plats made by persons not owning the land are not made effectual by it: *Lee v. Lake*, 14 M. 12; *Detroit v. Detroit & M. R. Co.*, 23 M. 173.

8. Whether a plat of ground for public uses, made under the act of 1839 (H. S. §§ 1478-1482), is to be regarded as a grant, or as an offer to dedicate, or partakes of the nature of both, some action by competent public authority by way of acceptance is necessary before it can have the intended effect of making public highways of the streets laid out upon it: *Wayne v. Miller*, 81 M. 447. And see *DEDICATION*.

As to rights of purchasers buying with reference to plats, see *ESTOPPEL*, §§ 25-32.

As to effect of record of plat ignoring highway, see *HIGHWAYS*, § 22.

II. ACKNOWLEDGMENT AND RECORD.

9. Conveyances by deeds duly acknowledged and recorded, of lots laid down on the plan,—the deeds describing the lots according to the plat, and referring to it as of record,—will not, for purposes of dedication, supply the want of acknowledgment of the plat: *People v. Beaubien*, 2 D. 256.

10. Where the statute (H. S. § 1474) required the acknowledgment of plats to be under the officer's seal, the record of such plat is unauthorized, and is not evidence of the plat's execution and validity so as to prove the existence of a highway by dedication: *Grand Rapids v. Hastings*, 36 M. 122.

11. Whether an acknowledgment of a plat not under seal of the justice taking it, as required by an act in force at the time (Laws of 1838, p. 581, § 2; 2 Terr. Laws, p. 577, § 2), might be cured by H. S. § 1487 for the time which elapsed after that act took effect, *quere*: *Detroit v. Detroit & M. R. Co.*, 23 M. 173.

12. The acknowledgment of a plat is the essential act of dedication, and without it a plat has no force in itself for any purpose: *Burton v. Martz*, 88 M. 761.

13. A plat of lands belonging to a woman was acknowledged by her husband as owner, and so recorded. The wife afterwards formally acknowledged the plat and the record was altered conformably. *Held*, that it did not entitle purchasers to hold the woman as having conveyed to her husband, or in any responsible way recognized title in him: *Ibid*.

14. Omission to acknowledge or record a plat does not invalidate a conveyance which refers to it in describing the premises: *Johnstone v. Scott*, 11 M. 232; *Wiley v. Lovely*, 46 M. 88.

15. Where both parties to a suit respecting lands trace title through conveyances made with reference to a recorded plat, it is immaterial that the plat was never properly acknowledged or recorded: *Johnstone v. Scott*, 11 M. 232; *Quinnin v. Reimers*, 46 M. 605.

16. The failure to record a plat offering to dedicate a square for public buildings is important only as it concerns the naked legal title which the record would have vested in the county in trust for the purpose intended: *Cass Supervisors v. Banks*, 44 M. 467.

17. A plat actually, though not legally, recorded may be used to identify the land described in the deeds referring to it: *Johnstone v. Scott*, 11 M. 232.

18. The sale of lands by duly acknowledged deeds referring to a plat as duly recorded by the grantor is a recognition of the validity of the plat even if that had not been duly acknowledged (H. S. § 1487): *White v. Smith*, 37 M. 291.

19. The validity of the acknowledgment and record of a plat *held* to be admitted by the course of pleading in chancery: *Ibid*.

III. VACATION OF PLATS.

20. The power given by a municipal charter [of Three Rivers] to the village authorities to open and vacate alleys does not exclude the exercise by the circuit courts of their statutory power (H. S. §§ 1476-78) to alter or vacate town plats: *Case v. Frey*, 24 M. 251.

21. The petition by which proceedings are instituted under H. S. §§ 1476-78 need not be verified by oath or signed by all the persons interested. The statute was intended to authorize any owner to make the application and any other owner to oppose it: *Ibid*.

PLEADINGS.

I. GENERAL PRINCIPLES.

- (a) *General principles; rules of construction.*
- (b) *Superfluous or immaterial matter.*

II. THE DECLARATION.

- (a) *In general.*
- (b) *The counts; joinder; election.*
 1. *In general; duplicity.*
 2. *Joinder; misjoinder.*
 3. *Election.*
- (c) *When the common counts may be used.*
 1. *Generally.*
 2. *For money paid or expended; money had and received.*
 3. *For labor and services; materials furnished.*
 4. *For lands or goods sold.*
 5. *For use and occupation.*
 6. *Upon account stated.*
- (d) *Subject-matter; certainty; necessary averments.*
 1. *Generally.*
 2. *In actions ex contractu.*
 3. *In actions ex delicto.*
 4. *Declaring upon statute.*
- (e) *Profert and oyer.*

III. PLEAS.

- (a) *In general.*
- (b) *Pleas in abatement.*
 1. *When allowable; what may or should be thus pleaded.*
 2. *Requisites.*
- (c) *Pleas in bar.*
 1. *Generally.*
 2. *The general issue; what defences admissible thereunder.*
 3. *Notice of special defence.*
- (d) *Pleas puis darrein continuance.*

IV. REPLICATIONS.

V. DEMURRERS.

VI. AFFIDAVITS; BILLS OF PARTICULARS.

- (a) *Affidavit of amount due.*
- (b) *Affidavits of non-execution.*
- (c) *Bills of particulars.*

VII. VARIANCE BETWEEN ALLEGATIONS AND PROOF; WHAT PROVABLE UNDER PARTICULAR ALLEGATIONS.

- (a) *In general.*
- (b) *In actions ex contractu.*
- (c) *In actions ex delicto.*
- (d) *When disregarded or deemed waived.*

VIII. AMENDMENTS.

- (a) *In general.*
- (b) *Of the declaration.*
- (c) *Of other pleadings, etc.*

IX. ADMISSIONS; WAIVERS.

- (a) *In general.*
- (b) *What admitted by demurrer.*
- (c) *Admissions and waivers by pleading the general issue and going to trial.*

X. AIDED BY VERDICT OR JUDGMENT.

As to pleadings in chancery, see EQUITY, V.

As to pleadings in justices' courts, see JUSTICES OF THE PEACE, III, (d).

As to the issues and the framing thereof in probate appeals, see APPEAL, §§ 375-396; LIMITATION OF ACTIONS, § 201.

As to pleadings in criminal prosecutions, see CRIMES, IV, (i), (n), V, (c).

I. GENERAL PRINCIPLES.

(a) *General principles; rules of construction.*

As to principles specially applicable to pleadings in actions for LIBEL or SLANDER, and of COVENANT, EJECTMENT, REPLEVIN, TRESPASS, TRESPASS ON THE CASE and TROVER, see those titles.

1. The object of pleading is to apprise the opposite party and the court of the grounds of the pleader's claim or defence: *Hurtford v. Holmes*, 8 M. 460; *People v. Miller*, 15 M. 354; *Batterson v. Chicago & G. T. R. Co.*, 49 M. 184; *Merkle v. Bennington*, 68 M. 183 (Jan. 12, '88).

2. And a pleading is generally sufficient when it fully accomplishes this purpose: *People v. Miller*, 15 M. 354.

3. Such facts must be averred as will, if admitted, lead to a necessary legal conclusion of liability or guilt: *Enders v. People*, 20 M. 233, 240.

4. A pleading need not allege more than is sufficient, *prima facie*, to constitute a good cause of action or defence: *Attorney-General v. Michigan State Bank*, 2 D. 359; *Farmers' etc. Bank v. Kingsley*, 2 D. 379, 386.

5. The pleader is not bound to anticipate, nor need he notice and remove, every possible exception, answer or objection that may exist, and with which the adversary may intend to oppose him: *Ibid.*

6. Nor need a party deny allegations before they are made: *Brown v. Thompson*, 29 M. 72.

7. It is not necessary to allege implications of fact or presumptions of law: *Farmers', etc. Bank v. Kingsley*, 2 D. 379, 387.

8. A pleading should contain allegations of facts and not of evidence: *Picard v. McCormick*, 11 M. 68.

9. The wording of pleadings should be precise: *Batterson v. Chicago & G. T. R. Co.*, 49 M. 184.

10. But extreme niceties and technical exactness in form in the requirements of pleadings are not favored: *Coon v. Plymouth P. R. Co.*, 81 M. 178.

11. A pleading is double if a single issue cannot be made to controvert it by denying any one material fact: *People v. River Raisin & L. E. R. Co.*, 12 M. 389.

12. S. L. 1849, § 26, regulating pleadings in the county court, required but a brief statement of plaintiff's claims or demands, without regard to previous forms; and it *seems* it was enough for plaintiff to set forth, in some manner, sufficient to apprise defendant of what he had to meet: *Mills v. Spencer*, 3 M. 127.

13. The statute abolishing special pleadings does not make special pleading void where the parties have voluntarily adopted it, joined issue, and proceeded to trial and judgment: *Wales v. Lyon*, 2 M. 276.

14. No plea is necessary to bring to the notice of the court facts which the judges must judicially know: *People v. Mahaney*, 18 M. 481.

15. If the allegations in a pleading conflict with a public statute they must be disregarded: *People v. River Raisin & L. E. R. Co.*, 12 M. 389.

16. Parties cannot be allowed to stipulate or to admit by pleading that a statute was not properly or constitutionally passed: *Attorney-General v. Rice*, 64 M. 385.

17. In pleading every implication will be taken most strongly against the pleader: *Bush v. Dunham*, 4 M. 339.

18. An ambiguous allegation is construed most favorably for the party against whom it is made: *Browne v. Moore*, 32 M. 254.

19. The construction and interpretation of a pleading in the record is matter of law for the court, and a declaration cannot be changed because the finding of facts imputes to it something that it does not imply: *Earle v. Westchester F. Ins. Co.*, 29 M. 414.

20. Repleader is never awarded in favor of the party beginning the mispleading and to whose error the subsequent mispleading is traceable: *Whittemore v. Stephens*, 48 M. 578.

21. Arbitrators are not held to the niceties of pleading and evidence that govern the action of courts: *Chicago & M. L. S. R. Co. v. Hughes*, 28 M. 186.

22. It is presumed that pleadings are not

put in for sham purposes or in bad faith, and that they cannot be attacked except upon averments to the contrary: *Sanford v. Huxford*, 83 M. 813.

(b) *Superfluous or immaterial matter.*

23. Addition of superfluous words which cannot mislead in the caption of an unsworn pleading is immaterial: *e. g.*, calling the court in which a demurrer is filed "the superior court of the city of Grand Rapids," when the court's legal title is "the superior court of Grand Rapids:" *Comstock v. McEvoy*, 52 M. 324.

24. Except in describing a written instrument which bears a written date, allegations of time are not, in general, material in a declaration: *Howland v. Davis*, 40 M. 545.

25. An averment as to the source of title is immaterial where the fact of ownership is the material question: *Monaghan v. Agricultural F. Ins. Co.*, 53 M. 238.

26. In a pleading, all beyond what is necessary to constitute, *prima facie*, a sufficient cause of action or defence, is surplusage: *Attorney-General v. Michigan State Bank*, 2 D. 359.

27. But no allegations descriptive of that which is legally essential to the claim or charge can be rejected as immaterial: *Harrington v. Worden*, 1 M. 487.

28. Anything outside of the facts necessary to state a cause of action is surplusage; the necessary facts, however, must be stated: *Smith v. Holmes*, 54 M. 105.

29. When a contract is set forth at length in the declaration, any allegation in respect to its description or effect, in a matter which must appear on its face as set forth, is superfluous and should be treated as surplusage: *Regents v. Detroit Young Men's Society*, 12 M. 188.

30. As, where the contract of corporations was alleged to be "sealed with the seals of the respective parties," but upon its face it appeared to be executed by agents who had only affixed their own seals: *Ibid*.

31. An erroneous allegation in a declaration that a release unnecessarily referred to in the declaration was executed under a certain statute is to be treated as surplusage: *Holdridge v. Farmers', etc. Bank*, 16 M. 66.

32. Where a contract as set forth in the declaration is for the payment at the end of the month for stone delivered during the month, a further averment that it is to be paid for according to a certain other contract not set forth will be regarded as surplusage: *Stange v. Clemens*, 17 M. 402.

33. A charge of conspiracy is mere surplusage in an action for malicious prosecution: *Hamilton v. Smith*, 39 M. 222.

34. The introduction of the words "falsely and fraudulently" as well as the words "carelessly and negligently" is surplusage in a count the gravamen of which is expressed to be negligence merely: *Smith v. Holmes*, 54 M. 105.

35. The fact that a declaration for damages for misrepresenting the value of land sold to plaintiff charges fraudulent and deceitful purposes on defendant's part does not necessitate proof of such purposes: *Holcomb v. Noble*, 69 M. 396.

36. The recital, in a declaration for seduction, of authorization to plaintiff (the victim's mother) to bring suit, cannot be treated as surplusage, but shows that the action is the statutory one for the injury to the daughter: *Ryan v. Fralick*, 50 M. 488.

37. Where of two pleas — *non assumpsit* and not guilty — filed to the whole of a declaration, the former meets the whole, the latter may be treated as superfluous and a nullity: *The Milwaukee v. Hale*, 1 D. 306.

II. THE DECLARATION.

As to declarations in EJECTMENT, see that title, §§ 106-116.

As to declarations in justices' courts, see JUSTICES OF THE PEACE, III, (d), 2.

As to declarations in probate appeals, see APPEAL, §§ 375-379.

As to time for filing declaration, see DEFAULT, §§ 1-4.

As to filing and serving declaration as commencement of suit, see PROCESS.

(a) *In general.*

38. In non-bailable actions a variance between the declaration and the writ of summons as to the form of action is entirely immaterial, and in bailable actions it would operate only to discharge the bail and not to nullify the declaration: *Smith v. Wayne Circuit Judge*, 27 M. 87.

39. Where suit is begun by summons in *assumpsit*, and declaration in debt is filed, if defendant appears and pleads that the cause of action did not accrue in ten years he cannot complain of the variance: *Brewer v. Boynton*, 71 M. — (July 11, '88).

40. The subject-matter of the declaration, not the name it gives to the action, is what determines the form of action used: *United States Manuf. Co. v. Stevens*, 52 M. 331.

As to the form of action shown by certain declarations, see ACTIONS, §§ 55-63; DEBT, § 5.

41. A declaration is not demurrable for omitting venue (H. S. § 7777): *Danaher v. Hitchcock*, 84 M. 516.

42. In garnishment proceedings an objection to the judgment against the principal debtor, that in the copy of the declaration served the name of the county was omitted in the entitling, was held to be of no force: *Allen v. Hazen*, 26 M. 142.

43. In all courts the declaration must be signed by some one, and this signature is usually the test to determine who appears: *Benallick v. People*, 31 M. 200.

44. A declaration that sets up no sufficient cause of action is fatally defective, and supports no proofs: *Parker v. Armstrong*, 55 M. 176.

45. A special count that states no cause of action supports no proof: *Mitchell v. Scott*, 41 M. 108.

(b) *The counts; joinder; election.*

1. In general; duplicity.

46. Every special count in a declaration must be regarded as setting up a separate claim: *Picard v. McCormick*, 11 M. 68; *Rose v. Jackson*, 40 M. 29.

47. And a declaration containing several counts is not defective because one count claims damages below the jurisdiction of the court: *Picard v. McCormick*, 11 M. 68.

48. A single count can cover but one cause of action: *Ives v. Williams*, 58 M. 636.

49. A count in a declaration must be construed as an entirety in ascertaining what its gravamen is: *Smith v. Holmes*, 54 M. 105.

50. A cause of action under a special contract cannot be so divided that recovery can be had partly on a general count and partly on a special: *Beecher v. Pettee*, 40 M. 181.

51. It is not necessary that special counts in *assumpsit* should be harmonious, even when the same instrument is set out in each as the foundation of an action. And the court cannot refuse to receive evidence under the declaration on any such ground as that what would support one count would defeat another: *Barton v. Gray*, 48 M. 164.

52. Defendant who has asked no bill of particulars must be prepared to meet any case that would be admissible under the common counts as if there had been no special count, and recovery will not therefore be limited by the terms of a special count where the common counts are also relied on: *Hall v. Woodin*, 35 M. 87.

53. A plaintiff has a right to abandon a special count and seek to recover on the common counts which he has annexed thereto: *Wyman v. Crowley*, 33 M. 84.

54. Where the allegations made in the common and special counts of a declaration are inconsistent with each other, and the plaintiff has introduced his evidence in reliance on the special count, he cannot then abandon it and recover under the common counts: *Wetmore v. McDougall*, 82 M. 276.

55. Pleading a special count in *assumpsit* does not estop the plaintiff from recovering under the common counts if he abandons the special count at the outset and all his evidence is consistent with the common counts: *Berringer v. Cobb*, 56 M. 557.

56. A count is demurrable for duplicity if it combines a cause of action for a monthly allowance, payable under particular regulations, with a distinct cause of action for a round sum due under different regulations: *Portage Lake, etc. Society v. Phillips*, 36 M. 22.

57. A declaration for seduction examined and held not objectionable for duplicity as combining in any one count a cause of action in case and also in trespass: *Watson v. Watson*, 49 M. 540.

58. A count for damages for the unlawful sale of liquor cannot include a claim for the recovery of the money paid: *Friend v. Dunks*, 87 M. 25.

59. Misjoinder in a single count of two incompatible causes of action, such as tort and *assumpsit*, is, it seems, cured by judgment if no demurrer or other objection is interposed: *Schafer v. Boyce*, 41 M. 256.

60. Adding a single *ad damnum* clause "for the damages as aforesaid suffered" will not cure the misjoinder of causes of action in *assumpsit* and case: *Friend v. Dunks*, 89 M. 738.

2. Joinder; misjoinder.

61. Plaintiff may join all his causes of action in one declaration if in separate suits he could recover on each in the same form of action and on the same proofs: *Tregent v. Maybee*, 54 M. 226.

62. A declaration in trespass on the case for damages from the unlawful foreclosure of a mortgage may include a count in trover for the excess of the proceeds of sale retained by the mortgagee beyond his debt: *Bearss v. Preston*, 66 M. 11.

63. A count of which the gist is that the parties agreed to buy lands jointly, each paying half, and that defendant made the purchase for \$1,500, but represented to plaintiff

that it was for \$2,000, whereby he induced plaintiff to pay him \$1,000 instead of \$750, and that plaintiff sues him for the excess, with interest, may be joined with the common counts: *Young v. Taylor*, 36 M. 25.

64. One who had contracted to deliver all his lumber sold part of it to third persons. *Held*, that recovery might be sought against him under common and special counts in the same declaration. The special count would lie for breach of contract or wrongful conversion, or both, and the common counts for the conversion: *Hart v. Summers*, 38 M. 399.

65. When it is one of the terms of a contract that an engine is good, and if not found so on trial shall be made good, the right to return it in case of failure is in pursuance and not in avoidance of the contract; and a count for breach of warranty is not inconsistent with one averring return, or with the common count for money had and received: *Kimball & A. Manuf. Co. v. Vroman*, 35 M. 310.

66. It seems that, since the enactment of H. S. § 7778, allowing *assumpsit* to be brought upon judgments, the common counts may be joined with special counts upon judgments, a count for use and occupation, a count upon a special contract to pay rent, and a special contract to purchase a house and lot: *Hogsett v. Ellis*, 17 M. 351.

67. Where there are three counts in a declaration in trespass to recover damages for personal injuries received by the plaintiff from the dogs of defendants, two of which counts are founded on the common-law liability for such injury, and the other based upon a special statute, it cannot be said as a legal proposition that they are all for the same cause of action, so as to render a verdict against the defendants on the second count inconsistent with one in their favor on the first and third, and thus entitling them to judgment on the whole record: *Swift v. Applebone*, 23 M. 353.

68. The rules with regard to the joinder or misjoinder of counts in a common-law declaration apply to a complaint under the boat and vessel law: *The Milwaukee v. Hale*, 1 D. 306.

69. Counts in a complaint under the boat and vessel law of 1869 examined, and *held* to be in *assumpsit* and properly joined: *Ibid*.

70. The objection of misjoinder of counts should be disposed of at the outset of the trial and the plaintiff made to elect between them instead of being allowed to go over the whole range of testimony without doing so: *Ives v. Williams*, 53 M. 636.

71. Joinder of repugnant counts in the same declaration does not preclude recovery

on one of them; they do not nullify each other: *Berringer v. Cobb*, 58 M. 557.

3. Election.

72. It is not a matter of right to have plaintiff compelled to elect between the counts of the declaration where there is no misjoinder. The union of different statements is allowable: *Cook v. Perry*, 43 M. 623.

73. Election between counts need not be required where, in *assumpsit* for money obtained by defendant through fraud, the common counts are joined to a special count waiving the tort: *Tregent v. Maybee*, 54 M. 226.

74. A declaration in case contained two counts, one of which alleged the wrongful expulsion of plaintiff from premises occupied, and the other an assault and battery. *Held*, that as no inconsistency between these counts was pointed out, there was no error in refusing to require an election between them: *Taylor v. Adams*, 58 M. 187.

75. It seems that a motion to require plaintiff to elect between common and special counts in his declaration ought to be granted where the grounds for recovery thereunder may be inconsistent with each other; or else the trial judge should restrict recovery under the special counts to items which fall within the precise terms of the agreement on which the count is based: *McLennan v. McDermid*, 50 M. 879.

76. The objection that on a former trial plaintiff elected to go to trial upon a different count is waived if not raised until after the verdict: *Barten v. Gray*, 57 M. 623.

77. Whether it is not an abuse of judicial discretion to allow a plaintiff who has elected to proceed under special counts to change his election and ask for judgment on the common counts, *quere*. But where, in either case, the plaintiff must rely on the same facts and the defence is the same, the error is unimportant: *McLennan v. McDermid*, 52 M. 468.

78. Mistrial does not occur where plaintiff elects to rely on a particular count after evidence has been submitted, if the proofs received are relevant to the count chosen, and if the others are not so inconsistent with it that the jury can be substantially misled by their averments and render a general verdict. Such a verdict may be applied to the count elected, and, if desired, the record may be amended accordingly: *Barton v. Gray*, 57 M. 623.

79. A party who has been compelled to elect between the common and special counts of his declaration is at liberty, on a new trial,

to proceed upon the other counts: *Gott v. Superior Court Judge*, 42 M. 635.

80. A ruling requiring a party to elect between the counts of his declaration, and the practice thereon, would not bind the court upon a new trial of the case if brought to trial in the same shape as before: *Ibid*.

(c) *When the common counts may be used.*

1. Generally.

81. A judgment must be declared on specially, and cannot be sued on the common counts: *Gooding v. Hingston*, 20 M. 439.

82. Where one sues for not being suffered to complete an express contract, he must declare specially and cannot rely on the common counts: *Beecher v. Pettee*, 40 M. 181; *Hamilton v. Frothingham*, 59 M. 253.

83. Vendors who have not fully completed their contract cannot recover upon that, and, if prevented from completing it by the action of the vendee, can sue only upon the special contract for damages on this ground, and not upon the common counts: *Wilson v. Wagar*, 26 M. 452.

84. Where an article was ordered of a manufacturer at a specified price, and work was done and materials used towards its construction, but before it was completed the order was countermanded, and the materials remained in the manufacturer's hands, it was held that the manufacturer could not recover on the common counts the value of such labor and materials, but should sue on the special contract for being prevented from performing it: *Hosmer v. Wilson*, 7 M. 294.

85. There can be no recovery on a count for work and labor where the only showing is that defendant employed plaintiff to work for him and then refused to allow him to do so. The plaintiff in such case should count specially on the contract: *Moore v. Nason*, 48 M. 300.

86. Where an agreement for the sale of saw-logs contemplates the measurement by scaling as precedent to the vesting of title, the vendor cannot recover under the general count as upon a complete contract, if that has not been done: *Begole v. McKenzie*, 26 M. 470.

87. An action on the common counts will not lie where proof of the breach of a contract is necessary to recovery: *Phippen v. Morehouse*, 50 M. 537.

88. Stipulated damages for the breach of an express contract cannot be recovered under the common counts: *Butterfield v. Seligman*, 17 M. 95.

89. The common counts are not adapted to a recovery upon a promise to pay a given sum in consideration of the plaintiff's deeding to defendants certain land, to be by them deeded to a third person for land the latter was to convey to a railroad company for depot grounds: *Mace v. Page*, 33 M. 38.

90. Where mortgaged land has been deeded with a covenant against encumbrances, and the grantee has voluntarily paid the mortgage, he should, in suing to recover the money from his grantor, make his declaration so far special as to exhibit the claim as founded on the covenant: *Carney v. O'Neil*, 27 M. 495.

91. Where one has promised the maker of a promissory note, for a consideration proceeding from the latter alone, to pay the note when due, the holder of the note cannot recover upon such promise on the common counts in *assumpsit*, but, if entitled to recover at all, must declare specially: *Halsted v. Francis*, 81 M. 113.

92. Where parties have agreed to run their logs in a common mass and to supply each his share of the expense thereof for the joint benefit, and one of them fails to do so and the other supplies the deficiency, the latter may perhaps have a right of action against him for damages, of which the cost of the extra labor supplied by him may be the criterion; but he has no right of action against him on the common counts so long as there was no agreement that he should make good the deficiency and so long as the cost of the extra labor remains unliquidated: *Toga Manuf. Co. v. Stimson*, 48 M. 213.

93. Where a contract for work to be done by plaintiff calls for payment in notes, a claim that defendant never gave the notes called for by the contract requires that the contract should be sued on, and cannot be considered in a suit for the value of the work: *Whitaker v. Kilroy*, 70 M. 635.

94. Where a contract has been fully performed a party may, in general, recover under the common counts: *Shaw v. Bradley*, 59 M. 199.

95. Recovery under the common counts cannot be had on a special contract performed on plaintiff's part, except for money due: *Pierson v. Spaulding*, 61 M. 90.

96. Where the contract between two parties has been executed by plaintiff, and nothing remains but payment to be made by defendant, the former may sue upon the common counts and need not declare specially: *Bush v. Brooks*, 70 M. 446.

97. Where goods are sold on credit to be paid for in a note, if the note is not given, the

vendor, if he sues before the time of credit expires, must declare on the contract; but after the expiration of the time of credit he may sue on the common counts: *Gibbs v. Blanchard*, 15 M. 292.

98. A declaration on the common counts alone is insufficient in an action by an individual for the price of goods purporting to be sold by a firm in which he was a partner, if there is no showing of any assignment of the claim by the firm to the plaintiff, or of any notice to defendant of the firm's dissolution: *Hatzenbuehler v. Lewis*, 51 M. 585.

99. Money actually due under an express contract is recoverable under the common counts: *Thomas v. Caulkett*, 57 M. 392.

100. The common counts are proper in suing for a debt which defendant has assumed by novation, where defendant has retained, for the purpose of paying it, the money originally due to the person whose debt is thus assumed, and where, also, the amount to be paid under the novation agreement is a sum certain. The count for money had and received covers the first case, and *indebitatus assumpsit* the other: *Mulcrone v. American Lumber Co.*, 55 M. 622.

101. The common counts in *assumpsit* sustain recovery for the value of the share of a crop of wheat belonging to a tenant in common of the wheat under a valid agreement: *McLaughlin v. Salley*, 46 M. 219.

102. The general counts in *assumpsit* will not suffice in an action under H. S. §§ 3423-3425 against a railroad company for a labor debt: *Chicago & N. E. R. Co. v. Sturgis*, 44 M. 538.

103. Where a contract within the statute of frauds has been executed by one party, and the other has received the consideration and its benefit, the former can maintain an action against the latter for the benefit thus conferred, accepted and appropriated, bringing suit on the appropriate common counts in *assumpsit*: *Whipple v. Parker*, 29 M. 369.

104. A certificate of deposit may be sued under the common counts with copy appended: *Cate v. Patterson*, 25 M. 191.

105. It has always been competent to sue the makers of notes, negotiable or otherwise, on the common counts: *Port Huron & S. W. R. Co. v. Potter*, 55 M. 637.

106. The payee of a conditional railroad aid note may, after condition performed, sue the note under the common counts: *Ibid.*

107. A non-negotiable note not purporting to be for value received may be given in evidence under the common counts: *Rickey v. Morrison*, 69 M. 139.

108. A declaration on the common counts with copy of a negotiable instrument appended is equivalent to an assertion that plaintiff is entitled to sue upon it in manner and form as set out: *Wilcox v. Sweet*, 24 M. 355.

109. A county may be sued by a declaration on the common counts: *Cicotte v. Wayne County*, 44 M. 178.

110. Plaintiff in an action on the common counts is confined, on appeal from justice's court, to the particulars of his claim as stated in the justice's return: *Button v. Russell*, 55 M. 478.

2. For money paid or expended; money had and received.

See, also, ASSUMPSIT, IV, V.

111. Where there is a special contract between the parties, one cannot recover upon a general count for money paid to the other's use, except where he could have recovered without any special contract: *Carney v. O'Neil*, 27 M. 495.

112. The count for money had and received includes any dealings whereby money due to plaintiff came into defendant's hands as factor from sales on commission: *Freehling v. Ketchum*, 39 M. 299.

113. The common count for money had and received sustains recovery of money paid on an express contract by mistake and in ignorance of material facts: *Lane v. Pere Marquette Boom Co.*, 62 M. 63.

114. The common money counts in *assumpsit* lie against an agent for moneys received in making collections on a mortgage belonging to his principal, and for moneys advanced to be used in foreclosure: *Schmemann v. Rothfuss*, 46 M. 453.

115. A declaration against a justice and his sureties for money received by him as justice must set forth the grounds of the specific liability in a special count; and the general counts added thereto are surplusage: *Dane v. Holmes*, 41 M. 661.

116. A general count for money paid is sufficient in an action by a bondsman to recover back money paid for the benefit of his principal; and if the action is brought on both general and special counts, any objections based on the latter are immaterial: *Mitchell v. Chambers*, 48 M. 150.

117. The common counts lie to recover the amount of a tax paid by plaintiff for defendant's use, though defendant's duty to pay the tax arose on his sealed contract to sell the land to plaintiff: *Curtis v. Flint & P. M. R. Co.*, 32 M. 291.

118. Where one had promised to pay for certain repairs which another was to have made and had refused to pay for them after they were made, it was *held* that in an action to recover the money the latter would be at liberty to declare upon the common counts without setting up special circumstances or stating the consideration, that being matter of evidence: *Crane v. Grassman*, 37 M. 448.

119. Under the count for money paid to defendant's use plaintiff can put in evidence a note given by defendant and secured by chattel mortgage upon horses which plaintiff afterward purchased of him, and to save which plaintiff paid the note, taking an assignment of the debt and security. Such note is also admissible under the count for money had and received: *Brown v. McHugh*, 35 M. 50.

120. The common counts are sufficient for recovering the amount collected and wrongfully retained by defendant on securities which plaintiff had put up to indemnify defendant for going on a bond, the condition of which plaintiff has performed: *Blackwood v. Brown*, 34 M. 4.

121. The equitable owner of land, title to which was in a third party, caused it to be conveyed, to secure a debt, by deed absolute in form, to a person to whom he subsequently agreed, orally, to sell the land, and to whom he then surrendered possession, receiving from him part of the purchase money. *Held*, that the common counts would lie for the balance due: *Miner v. O'Harrow*, 60 M. 91.

122. *Assumpsit* for money had and received will lie without a special count at the suit of an insurance company to recover back the amount paid on a loss where the policy had been made void by fraudulent representations as to the extent of the loss: *Johnson v. Continental Ins. Co.*, 39 M. 33.

123. *Assumpsit* on the common counts, as for money had and received, lies where plaintiff sues for the excess paid under a written contract for timber, where the estimated quantity falls short and the vendor is bound to refund an amount corresponding to the shortage and reckoned according to a fixed basis of calculation. And under the common counts testimony is admissible to show the amount due for shortage: *Phippen v. Morehouse*, 50 M. 537.

124. *Assumpsit* on the common counts lies at the suit of a county treasurer against his official predecessor for the amount of county moneys which the plaintiff has accounted for to the county as received from defendant, but which in fact has not been so received: *Van Ness v. Hadsell*, 54 M. 560.

3. For labor and services; materials furnished.

125. Recovery can be had under the common counts upon an agreement to pay for services in forwarding the sale of one's land: *Fletcher v. Bradford*, 45 M. 349.

126. An attorney's retainer is recoverable under the common counts, and there need not have been an express promise to pay it: *Eggleston v. Boardman*, 37 M. 14.

127. A party is entitled under the common counts to recover for services performed by him outside of his contract: *Burroughs v. Morse*, 48 M. 520.

128. Where plaintiff had performed for defendant services shown to be worth more than plaintiff had received for them, and for which no bargain was made as to price, except one which defendant shortly after repudiated and refused to regard, it was error to rule that no recovery could be had on the common counts, and that the action should have been brought on the contract: *McQueen v. Gamble*, 33 M. 344.

129. An action lies on the common counts for services in driving defendant's logs under a written contract fully performed by plaintiff: *Shaw v. Bradley*, 59 M. 199.

130. Where, under a non-apportionable contract, a party has done anything from which the other party has received substantial benefit, and which he has appropriated, a recovery may be had on the *quantum meruit*, based on that benefit: *Allen v. McKibbin*, 5 M. 449.

131. The count in *indebitatus assumpsit* is appropriate to recover the value of work done and materials furnished in erecting a building under contract, where the terms of the contract have not been strictly complied with but the defaults have been waived: *Andre v. Hardin*, 32 M. 324.

132. One who by his contract has agreed to receive payment in something else than money cannot, where he has broken the contract, recover on the *quantum meruit* the value of his labor performed under the contract: *Roberts v. Wilkinson*, 34 M. 129.

133. Suit on *quantum meruit* lies where the mode of performing an unapportionable contract is so changed that the contract price for what has been done cannot be determined. So *held* where a person was employed to cut and skid logs and put them into Muskegon river at three dollars a thousand, and after cutting and skidding a quantity his employer directed him to cut no more and to put such as had been cut into Cedar creek, and

there was nothing to show what relation the cutting and skidding bore to the whole work: *Boyce v. Martin*, 46 M. 239.

134. Recovery may be had under the common counts for whatever plaintiff has done under a new agreement modifying the contract set forth in the special count: *Moon v. Harder*, 38 M. 566.

135. An action will lie on the common counts for wages fairly earned by past services already rendered under an express agreement of which defendant has prevented full performance: *Mitchell v. Scott*, 41 M. 108. See *Butterfield v. Seligman*, 17 M. 95, 98.

136. An action lies upon the common counts for work and labor done and materials furnished which plaintiff was induced to do and furnish by reason of a contract made between the parties, but not binding upon plaintiff because of the frauds and mistakes of defendant: *Bush v. Brooks*, 70 M. 446.

137. Where plaintiff is at liberty to treat the contract as at an end, though only partly performed, or where he has not performed in the manner or time agreed upon in the contract, but what he did was beneficial to defendant and was accepted by him, plaintiff may declare on the common counts: *Ibid.*

138. *Quantum meruit* does not lie for sheriff's or constable's fees: *Peck v. Grand Rapids Nat. Bank*, 51 M. 353; *Andrews v. Wilcoxson*, 66 M. 553.

139. An action upon the *quantum meruit* may lie against a city where the charter does not prohibit it: *Detroit v. Michigan Paving Co.*, 36 M. 335.

140. In an action by a father to recover on the *quantum meruit* for his minor son's services to defendant, evidence is admissible to show that in the course of the service the son embezzled from defendant more than the worth of such service: *Schoenberg v. Voigt*, 36 M. 310.

4. For lands or goods sold.

141. The *indebitatus* count includes a count for real property sold, and may be used to recover the price or value of an estate sold by plaintiff to defendant: *Nugent v. Teachout*, 67 M. 571.

142. The price of cattle may be recovered under the common count for goods, wares and merchandise sold and delivered: *Weston v. McDowell*, 20 M. 353.

143. Where plaintiff sold goods and received securities for the purchase price, one of which he collected and the other offered to return, and he afterwards brought suit to re-

cover the balance, it was held not necessary that he should declare specially: *Gardner v. Gorham*, 1 D. 507.

144. Where a contract for the sale and delivery of goods has been completely performed, the price may be recovered under the common counts in *assumpsit*: *McGraw v. Sturgeon*, 29 M. 426; *Richards v. Burroughs*, 62 M. 117.

145. The amount of a fully executed contract for the sale and delivery of goods may be recovered either under a general count for goods sold and delivered or under a special count upon the contract. The basis of the action under the general count is an undertaking which the law imputes to the defendant as a consequence of the full execution of the special agreement by the plaintiff: *Begole v. McKenzie*, 26 M. 470.

146. The common counts will lie for the price of articles sold, on the vendee's refusal to give an order which the plaintiff had agreed to take in payment, and which was to be drawn on a third person and be payable in labor: *Stone v. Nichols*, 43 M. 16.

147. The count for goods sold and delivered lies for the value of such articles delivered in part performance of an entire contract of sale as have been retained by the vendee: *Clark v. Moore*, 3 M. 55.

148. The count for goods sold and delivered lies where a vendee has actually received and appropriated articles delivered in partial performance of a special contract that the vendor has not fully carried out: *Begole v. McKenzie*, 26 M. 470.

149. Subject to recoupment of damages for incomplete performance the common counts lie to recover the value (as fixed by the contract) of articles delivered and accepted in part performance of a contract where plaintiff has defaulted as to the rest: *Gage v. Meyers*, 59 M. 300.

150. Where personal property has been sold or exchanged and there has been a breach of the implied warranty of title, the count for goods sold and delivered — if maintainable — is based upon the ground that the contract of sale or exchange is rescinded, wherefore the law implies a promise to pay the price or what the goods are reasonably worth; it cannot lie while the original contract is in force: *Hunt v. Sackett*, 31 M. 18.

151. The common count for goods sold and delivered lies against partners after dissolution of the firm for goods ordered before the dissolution and forwarded before the vendors knew of it: *Goodspeed v. South Bend Chilled Plow Co.*, 45 M. 237.

152. The count for goods sold and delivered does not lie where the goods were sold as part of a bill to a third person and never went into defendant's hands, and the conditions proposed by defendant in his offer to buy were not observed: *Carpenter v. Butterfield*, 34 M. 97.

5. For use and occupation.

153. Use and occupation may be sued for generally or specially without reference to the form of the lease: *Conkling v. Tuttle*, 52 M. 680.

154. Where the count for use and occupation is omitted, the common counts for goods sold and delivered, work and materials, money lent, money paid, money had and received, and money found due on an accounting will not sustain recovery for the use of land demised at a specified yearly rental: *Heyerman v. Kanter*, 36 M. 816.

Further as to recovery for use and occupation, see ASSUMPSIT, III.

6. Upon account stated.

155. The count on an account stated with an administrator is bad in a suit against the estate: *Fish v. Morse*, 8 M. 34.

Further as to account stated, see ASSUMPSIT, §§ 115-143.

(d) Subject-matter; certainty; necessary averments.

1. Generally.

As to averments such as to sustain proof of special damage, see DAMAGES, §§ 60-72; FALSE IMPRISONMENT, §§ 27-30.

156. Certainty to a common intent is all that is required in the declaration: *Truesdale v. Hazzard*, 2 M. 344; *Merkle v. Bennington*, 68 M. 138.

157. The rule of certainty does not require the declaration to negative every possible counter-implication: *Weiss v. Whittemore*, 28 M. 366.

158. The declaration need not negative a defence against the existence of which there is a general presumption of law: *Carrier v. Cameron*, 31 M. 373.

159. Declarations are construed with reasonable intendments, and their terms are read and applied in the natural and usual sense and without supposing qualifications which, though possible, are not fairly indicated: *Batterson v. Chicago & G. T. R. Co.*, 49 M. 184.

160. But no presumption can be raised

in favor of a plaintiff against his own express allegations: *Raymond v. Hinkson*, 15 M. 113.

161. Where the declaration employs a term which, standing by itself, has a technical meaning, such term is nevertheless to be read so as to make sensible the whole clause in which it stands; so, the phrase "acquitted and discharged," in a declaration for malicious prosecution, was held, because of its connection, to refer to a *nolle prosequi*: *Stanton v. Hart*, 27 M. 539.

162. A general expression superadded to specific words in the charging part of a declaration is construed as a term of the same class as the rest: *Macumber v. White River Log, etc. Co.*, 52 M. 195.

163. It is enough in giving the residence of parties in a declaration to describe them as "of the city of Detroit," or otherwise: *Elliott v. Farwell*, 44 M. 186.

164. It is sufficient to allege the undertaking in a written instrument according to its legal effect: *Jerome v. Hopkins*, 2 M. 96.

165. A defective description of a paper in pleading is cured by referring to the record of the paper, especially if the pleading also sets it forth in full: *Botsford v. Botsford*, 49 M. 29.

166. In a declaration filed by a corporation the general allegation that it is a corporation under the laws of this state is a sufficient averment of corporate existence: *Palmeter v. Pere Marquette Lumber Co.*, 31 M. 183.

167. Where recovery is sought from a consolidated railroad company for a cause of action that arose originally against one of its constituents, the declaration must show against what company it arose, and aver such facts as will subject the new company to liability upon it: *Marquette, H. & O. R. Co. v. Langton*, 32 M. 251.

168. A declaration charging defendants as corporations "owning, occupying and doing business on and over" a certain named railroad "under the laws of the state of Michigan" was held, under plea of the general issue, sufficiently to allege defendants to be corporations and competent to be sued: *Grand Rapids & I. R. Co. v. Southwick*, 30 M. 444.

169. In declaring against a common carrier of passengers for a refusal to carry it is necessary to aver that the plaintiff offered, or was ready and willing, to pay the fare: *Day v. Owen*, 5 M. 520.

170. It is sufficient in pleading a carrier's rule or regulation to state the rule or regulation, that plaintiff comes within it, and aver its reasonableness. The facts upon which the party relies to establish its reasonableness need not be spread upon the record: *Ibid*.

171. Admitting it to be one of the duties of a common carrier to transport without unreasonable delay, the neglect of that duty could not be a ground of recovery against him without an averment in the declaration charging the duty and averring a breach of it: *Buckley v. Great Western R. Co.*, 18 M. 121.

172. On appeal from a justice's judgment a statement of the cause of action is sufficient if it would have sustained a recovery before a justice: *Soper v. Mills*, 50 M. 75.

2. In actions ex contractu.

173. Demand of payment of a promissory note at the time and place of payment specified therein need not, in an action against the maker, be averred or proved: *Reeve v. Pack*, 6 M. 240.

174. A declaration upon a promissory note absolute on its face, and in the ordinary form, need not notice a contemporaneous agreement in writing varying the terms of the note contained in a separate paper: *Smalley v. Bristol*, 1 M. 153.

175. In declaring by copy on a note the copy served need not contain a receipt that has been written upon the note for a part of the amount, nor a memorandum of protest for non-payment: *Buhl v. Trowbridge*, 42 M. 44.

176. An indorsee's count upon a promissory note against copartnership makers need not specially allege the firm's capacity to make notes or set forth facts wherefrom such capacity may be implied: *Carrier v. Cameron*, 31 M. 373.

177. Where a declaration on the common counts against two defendants has a promissory note appended, purporting to be signed in a firm name, it is not demurrable for a failure to aver that defendants are partners: *Danaher v. Hitchcock*, 34 M. 516.

178. A declaration on a guaranty within the purview of the statute of frauds need not aver that the guaranty was in writing, or that the undertaking guarantied was made with the formalities required by the statute: *Dayton v. Williams*, 2 D. 31.

179. A declaration on a guaranty of the collection of a note is demurrable if it does not state that legal proceedings have been taken to enforce collection without effect: *Bosman v. Akeley*, 39 M. 710.

180. A covenant should be pleaded according to its form in the deed, leaving its effect to be determined afterwards: *Peck v. Hough-taling*, 35 M. 127.

181. Where one declares upon a covenant

alleged to be contained in a replevin bond he need not set forth the penal part of the bond; only so much of an instrument need be set forth as constitutes the foundation of the action: *Prentiss v. Spalding*, 2 D. 84.

182. A declaration on a replevin bond need not aver the issue and return of execution in the replevin suit: *Jennison v. Haire*, 29 M. 207.

183. A declaration on a coroner's official bond for taking an insufficient replevin bond sufficiently alleges a breach if it alleges that defendant did not well and faithfully perform his duty in the premises as coroner, and under this allegation makes the necessary specifications: *Fletcher v. Lee*, 65 M. 557.

184. A declaration on a county treasurer's official bond properly enough describes as moneys of the county liquor-tax moneys which the county collects as trustee for the townships and villages: *Marquette County v. Ward*, 50 M. 174.

185. In declaring on an agreement as a demise, it must either be stated by its legal effect or be set forth in such a manner that its legal character can be seen: *Tillman v. Fuller*, 13 M. 113.

186. The declaration in an action for rent on a parol lease must allege the time the term commenced: *Pendill v. Neuberger*, 64 M. 220.

187. A new promise need not be specially counted on in declaring upon a claim otherwise barred by bankruptcy discharge, but may be proved when defendant sets up the discharge: *Craig v. Seitz*, 63 M. 727.

188. A declaration by an assignee upon a conditional note not negotiable need not aver any formal assignment, but is sufficient if it avers plaintiff to be the owner and holder: *Draper v. Fletcher*, 26 M. 154.

189. H. S. § 1590 dispenses with the necessity, in an assignee's declaration upon a note indorsed with a guaranty, of those allegations concerning the assignment that are necessary in the case of non-negotiable paper: *Waldron v. Harring*, 28 M. 493.

190. Where an assignee of a non-negotiable chose in action sues in his own name he must allege the assignment in his declaration: *Blackwood v. Brown*, 33 M. 104; *Altman v. Fowler*, 70 M. 57.

191. The right to sue upon a contract as assignee must be positively averred, and an allegation of the assignment in the consolidated common counts will not support a recovery upon a special count in which it is not averred. Nor would a mere additional allusion to the assignment in the special count be sufficient: *Rose v. Jackson*, 40 M. 30.

192. Evidence of the mutual assignment of interests among several plaintiffs for the purpose of bringing joint suit is inadmissible in an action on the common counts, such assignment not being averred in the declaration: *Cilley v. Van Patten*, 58 M. 404.

193. A bill of particulars under a declaration on the common counts renders unnecessary a special averment of an assignment in the declaration: *Kelly v. Waters*, 31 M. 404; *Snell v. Gregory*, 37 M. 500.

194. A declaration by members of a joint-stock association, one of whom holds by assignment from one of the original associates, need not mention the assignment in suing one who holds money for the association, but may count as upon an original promise to all the plaintiffs: *Willson v. Owen*, 30 M. 474.

195. A special count upon a contract is bad on its face if it omits an essential part of the contract: *Rose v. Jackson*, 40 M. 80.

196. A plaintiff declaring specially upon an express contract between third persons alone must aver his title and then make out by evidence the same contract as that set forth in his declaration, and his right and title as alleged: *Ibid.*

197. In *assumpsit* a promise to be recovered on must be set out in the declaration: *Beecher v. Pettee*, 40 M. 181.

198. Great accuracy is required in the statement of the consideration which, in an action of *assumpsit*, forms the basis of the contract; and if any error is made in the description of it the whole contract is misdescribed: *Harrington v. Worden*, 1 M. 487.

199. In declaring upon a simple contract, unless it is one which imports a consideration, the whole consideration should be set forth, so as to show distinctly in what it consists, that the court may judge of its sufficiency to sustain the promise alleged: *Kean v. Mitchell*, 18 M. 207.

200. In a declaration on a contract for the purchase of goods an allegation that the defendant agreed to deliver the goods, "for a good and valuable consideration paid by the plaintiff to the defendant," is not a sufficient statement of the consideration to support the declaration on demurrer: *Ibid.*

201. Where the consideration for a promise sued upon consists of an agreement to do several distinct things the stipulation as to all must be set out, as the whole consideration must be truly stated: *Detroit, H. & I. R. Co. v. Forbes*, 30 M. 165.

202. A railroad company promised to move a man's barn and sheds from certain premises and put the barn in good repair, in considera-

tion of his conveying to them the right of way for their railroad track across the premises; *held*, that a declaration on said promise averring performance of the consideration and breach of the promise was good on general demurrer; also, that a general objection to the admission of any evidence under such a declaration, for the reason that it disclosed no cause of action, was not maintainable: *Ibid.*

203. A special count in *assumpsit* averring that defendants promised to perform an agreement made by a third party with plaintiffs, the consideration for defendants' promise being stated as moving from a third party to them, and there being no averment of any promise to plaintiffs, is demurrable: *Pipp v. Reynolds*, 20 M. 88.

204. A declaration upon the common counts in *assumpsit* need not set forth the consideration for an alleged promise, and its omission to do so is no ground for excluding evidence of the consideration: *Crane v. Grassman*, 27 M. 443.

205. A declaration against steamboat proprietors by a passenger to recover for the contents of a lost trunk must aver a consideration paid, or agreed to be paid, for the transportation of the trunk and its contents; and the averment must be supported by proof: *Wright v. Caldwell*, 8 M. 51.

206. A declaration in *assumpsit* on the common counts with copy of note attached, which, after stating the several causes of action, omits to allege an express promise, though bad on special demurrer is cured by judgment: *Hoard v. Little*, 7 M. 463.

207. A breach of contract is sufficiently alleged, in a declaration thereon, by alleging the non-payment of interest, where, under the contract, such interest is due at a fixed time and without any condition. No special demand need be alleged: *Regents v. Detroit Young Men's Society*, 12 M. 138.

208. Where building contractors had agreed to pay a certain sum to plaintiff when they got the payment on their contract, it was *held* that, if the agreement implied an obligation on defendant's part to take active measures to collect the money, the failure to do so must be averred: *Smith v. Ross*, 51 M. 116.

209. In a declaration on an alternative undertaking by the defendant to collect and pay over the money on certain notes by a day specified, or thereafter to pay the sum from his own means, an averment of non-payment after the specified day is a sufficient assignment of breach if not demurred to: *Seiber v. Price*, 26 M. 518.

210. Where a declaration for breach of a

contract to deliver all lumber owned by defendants avers that they have sold and delivered part to a third person, and avers plaintiff's readiness at all times to comply with the contract, it need not aver payment, as that could not have been demanded without delivery or readiness to deliver: *Hart v. Summers*, 38 M. 399.

211. Where a defendant's undertaking was to do several separate and independent things, and the declaration thereon only complained of his failure to do part of them, the stipulations as to the others need not be set out: *Detroit, H. & I. R. Co. v. Forbes*, 30 M. 165.

212. Where a contract purported to be executed by agents of the respective parties, and it was set forth at length in the declaration, and alleged to be the contract of the parties, the declaration was held sufficient without showing how the agency was constituted: *Regents v. Detroit Young Men's Society*, 12 M. 138.

213. On demurrer to a declaration upon a contract it was held that the averment in the declaration that "the said plaintiff and the said defendant entered into their certain contract in writing, which said contract, sealed by the said plaintiff and by the said defendant, by its agents and servants, the president and trustees of the village of Kalamazoo, executing the same, and having full power and authority so to do and to bind the defendant thereby, is in the words and figures following" (setting it forth *verbatim*), was sufficient to embrace whatever was essential to confer upon the president and trustees the proper authority to make the contract on behalf of the village: *Gale v. Kalamazoo*, 23 M. 844.

214. A special count alleging that defendants are indebted to plaintiff \$3,000 for damages sustained by him because of their failure to deliver certain described goods then before bought of them cannot sustain a cause of action: *Thomas v. Greenwood*, 69 M. 215 (April 6, '88).

215. A count in *assumpsit*, waiving a tort on which it rests, may properly state the facts that constitute the tort, as they will have to be proved: *Tregent v. Maybee*, 54 M. 226.

216. And a declaration in *assumpsit* for a conversion need not allege that plaintiff has waived the tort: *McDonald v. McDonald*, 67 M. 122.

217. A declaration against a stockholder upon a labor claim against the corporation must show the nature of the work and when it was done to establish defendant's liability: *Peterson v. Tilden*, 44 M. 168.

218. A declaration by the creditor of an

estate against an administrator for plaintiff's distributive share of the assets must allege facts showing that defendant has been acting as administrator and has thus become liable: *Basom v. Taylor*, 39 M. 682.

219. A declaration upon a voluntary subscription to the building of a railroad must allege that it was accepted and acted upon: *Northern Central M. R. Co. v. Eslow*, 40 M. 222.

220. A declaration on an assessment upon a subscription to stock in a railway company is sufficient on general demurrer though it does not expressly aver payment of five per cent., but sets it forth by way of recital; so, also, it is good on special demurrer aimed only at other defects: *Peninsular R. Co. v. Duncan*, 28 M. 130.

221. Declarations on justices' judgments require no further allegations as to jurisdiction than would be necessary in declaring on judgments of courts of record: *Goodsell v. Leonard*, 23 M. 874.

222. As to the proper form and contents of the declaration in an action by a township treasurer against an individual for an unpaid tax, see *Putman v. Fife Lake*, 45 M. 125.

223. In a particular case the declaration on a recognizance of special bail was held not to depart from the affidavit to hold to bail: *Wilkinson v. Nichols*, 48 M. 354.

And as to declarations against bail, see BAIL, §§ 36-40.

As to declarations in actions on policies, see INSURANCE, §§ 298-302, 305.

As to averment of permission to sue on residuary legatee's bond, see ESTATES OF DECEDENTS, § 260.

3. In actions ex delicto.

As to declarations for libel, see LIBEL, §§ 54-58.

As to declarations for slander, see SLANDER, §§ 16-24.

As to declarations in trespass, see TRESPASS, §§ 60-71.

224. In an action for misconduct as a constable in returning unsatisfied an execution for costs, a declaration that does not specifically describe the execution as of some date and return day, so that it could be identified and the time of return clearly ascertained from the declaration, is bad on demurrer: *Clark v. Gleason*, 30 M. 158.

225. In an action for interference with rights counts are demurrable that do not show the extent of plaintiff's rights and how they have been impaired; and though in the ab-

sence of a demurrer they are not considered fatally defective, their effect must be confined to what it would have been if they had been properly framed. This applies to actions on the case as well as to those upon the contract: *Ives v. Williams*, 58 M. 636.

226. One who bought the goods and good-will of a business afterwards sued the vendor for fraudulent representations. Held necessary to the ascertainment of damages that he aver in his declaration and show in his proofs what part of the consideration was paid for the good-will: *Collins v. Jackson*, 54 M. 186.

227. When A. sues B. for fraudulently misrepresenting the value of a note made by C. but used by B. in paying A., a declaration in tort which does not describe the note nor sufficiently identify it, nor allege that the representations were not true when made or were untrue afterwards, is insufficient: *Stoflet v. Marker*, 84 M. 813.

228. A declaration in a case for false warranty may be sustained without allegations that defendant "falsely and fraudulently warranted" and "falsely and fraudulently deceived" the plaintiff, if the substantial averments show the false warranty and the fraudulent sale, and deception of the purchaser: *Hopkins v. O'Neil*, 46 M. 403.

229. A declaration for false pretences must show (1) what they were; (2) that defendants made or authorized them; (3) that they were material; (4) that they were false and fraudulent and deceived plaintiff; (5) what defendants obtained by them. Nothing outside of this belongs to the issue, whatever force it may have as circumstantial evidence: *Parker v. Armstrong*, 55 M. 176.

230. A declaration alleging in effect that one of the defendants, claiming to be and acting as an agent, received money from plaintiff which was due his pretended principal for property sold to the plaintiff, and, upon paying it over to such principal, falsely represented that the property had not been paid for, and that he, defendant, owned it, and requested and thereby fraudulently procured a deed of such property to be made to his co-defendant, and that all this was done falsely and with intent to wrong, cheat and defraud the plaintiff, and with full knowledge and connivance of all the defendants, is held sufficient to authorize the plaintiff to recover upon proof of the facts alleged: *Whitman v. Johnston*, 85 M. 406.

231. A declaration for assault and battery need set forth no more specific description of the resulting injuries than a statement charging sickness and bodily pain to have been

among the sufferings caused by the assault: *Johnson v. McKee*, 27 M. 471.

232. Where the injury alleged to have been suffered by plaintiff from defendant's negligence is internal and invisible, the declaration in describing it should not be held to any technicality of description: *Laughlin v. Grand Rapids Street R. Co.*, 62 M. 220.

233. A declaration for negligent injury must set forth the duty which has been neglected, and aver the neglect, and the case fails if such neglect is not proved: *Flint & P. M. R. Co. v. Stark*, 38 M. 714.

234. A declaration for negligent injury must aver the fact and the manner of negligence; and plaintiff should be confined to what is set forth in his declaration: *Marquette, H. & O. R. Co. v. Marcott*, 41 M. 483.

235. A party suing for negligent injury is bound to set forth in his declaration the material facts relied on as his cause of action, and to prove the same combination of circumstances: *Batterson v. Chicago & G. T. R. Co.*, 49 M. 184.

236. In suing for damages from negligence plaintiff must count on the negligence relied on; but when this is properly averred he need not set out the facts which go to establish it. When defendant is notified with what negligence he is charged, he is thereby informed that the circumstances which tend to show whether he was wanting in due care in that particular will be in issue: *Lucas v. Wattles*, 49 M. 880.

237. A declaration in case for a fatal railway injury is demurrable if it does not so state the cause of action that defendant can, with reasonable certainty, ascertain in what respect it is charged with negligence, or if it does not count specifically upon some particular duty and breach thereof as causing the injury; it is not enough to refer to matters in an uncertain and ambiguous manner: *Addison v. Lake Shore & M. S. R. Co.*, 48 M. 155.

238. In actions on the case for negligent injury the plaintiff must allege in his declaration and prove on the trial that the injury complained of was occasioned by defendant's negligence, particularly specifying the duty and the breach thereof which constituted negligence, and averring also that plaintiff himself was in the exercise of ordinary care, and did not by his own negligence contribute to the injury: *Thompson v. Flint & P. M. R. Co.*, 57 M. 300.

239. In a declaration for a negligent injury the only negligence that need be alleged is that which caused the mischief complained of; and redundant charges, if allowed to be

proved, may confuse the real issues: *Thorsen v. Babcock*, 68 M. 523.

240. Where the facts stated in a declaration for negligence clearly imply the defendant's duty, it need not be expressly averred: *Geveke v. Grand Rapids & I. R. Co.*, 57 M. 589.

241. A declaration in an action of trespass on the case for negligence is sufficiently certain when the neglect of duty relied on and the resultant injury are described with substantial accuracy: *Merkle v. Bennington*, 68 M. 183.

242. A declaration against a railway company for negligent injury states a good cause of action in alleging that defendant, in placing its cars so as to obstruct a highway crossing and in leaving them there, has so negligently conducted itself as to cause the injury: *Young v. Detroit, G. H. & M. R. Co.*, 56 M. 431.

243. In a declaration for a railway injury, an averment that defendant negligently and carelessly drove a certain locomotive upon the railroad up to, upon and across a certain public highway at the crossing of the same and the said railroad, without giving the necessary statutory signals, viz., ringing a bell or sounding a whistle, was a sufficiently specific averment of defendant's negligence when taken in connection with the averment of consequential injury, and it entitled plaintiff to support it by evidence, under defendant's plea to the general issue: *Chicago & N. E. R. Co. v. Miller*, 46 M. 532.

244. A declaration for an injury caused by the insufficiency of a cattle-guard should state in what particulars it was insufficient; and if it does not do so it is demurrable: *Smead v. Lake Shore & M. S. R. Co.*, 58 M. 300.

245. A declaration against a railway company for the killing of animals that had got upon the track through the company's neglect to keep the side fencing in repair averred that defendant "so carelessly and negligently ran, conducted and directed the locomotive and train" that they struck and killed the animals "so being on the railroad as aforesaid by and through the neglect of the defendant to keep in repair the fences as aforesaid, and through the gross neglect and reckless conduct of the servants and employees of defendant on said locomotive in running down said animals," etc. *Held*, that as it was not claimed on the trial that the averment was so general that no evidence could be received in support of it, the jury was entitled to consider any evidence that was admitted without objection, and tended to prove the main allegation; and if sending

out a train without enough brakemen to keep it under control had any such tendency, this fact could be relied on as well as reckless conduct in the conductor or engineer at the time of the injury: *McDonald v. Chicago & N. W. R. Co.*, 51 M. 628.

246. A declaration for negligent injury is not demurrable for failing to state that the injured person did not know of the danger, if it does aver that he was without fault: *James v. Emmet Mining Co.*, 55 M. 835.

247. While a railway track was being raised at a highway crossing a man led his horse across the rails. A hind wheel of his buggy scraped the second rail and the horse became frightened, ran away and injured him. He sued the company and showed that although, in anticipation of danger, he slowly led the horse across the first rail to prevent the wheel from sliding, it did not occur to him to check the horse in crossing the second. *Held*, that the averment in his declaration that he "took the horse by the bits and attempted to lead him gently and carefully over said railroad at said crossing" is not a sufficient averment that he was in the exercise of ordinary care and free from negligence contributing to the injury; *held, also*, that by his own showing his negligence was such as to contribute to the injury, and the case should have been taken from the jury and a verdict ordered for defendant: *Thompson v. Flint & P. M. R. Co.*, 57 M. 300.

248. In an action for an injury caused by obstructions which in the first instance are lawfully in the street, but which defendant is bound to remove as speedily as possible, it is not necessary to allege that they were left there for an unreasonable time; the offence of leaving them there relates back so that it becomes unlawful from the beginning, and the time necessary for their removal is matter of justification and defence: *Bowen v. Detroit City R. Co.*, 54 M. 496.

249. A declaration against superintendents of the poor for injuries from their negligence in managing farms which they are empowered by statute to keep up, sustained: *Rowland v. Kalamazoo Poor Superintendents*, 49 M. 553.

250. A declaration for malpractice by a surgeon in setting a broken limb, *held*, on demurrer, to set forth sufficiently the facts and circumstances necessary to show a cause of action; the negligence, omission and improper treatment by defendant being stated as facts, thus notifying him with what misconduct in his profession he is charged: *Hanselman v. Carstens*, 60 M. 187.

251. A declaration in an action for negligence in setting a broken leg sufficiently states the duty defendant owed to plaintiff when it avers that defendant was a physician and surgeon, and as such was employed by plaintiff to set her broken leg: *Ibid*.

252. Where a physician is sued for malpractice it is improper for plaintiff's counsel to urge to the jury defendant's general incompetency as a ground of recovery, unless such incompetency has been alleged in the declaration and evidence given tending to show it; and a refusal to charge against recovery on that ground in such case is error: *Mayo v. Wright*, 68 M. 32.

253. Where a declaration against an assignee in bankruptcy set forth facts constituting a breach of duty, and alleged that plaintiffs as creditors of the bankrupt were thereby deprived of their claim against his estate, and that by means thereof the estate had been exhausted and the plaintiffs wholly deprived of their rights therein, the allegation of damage was held to be sufficiently specific to admit evidence showing whether the entire claim, and, if not, what part of it, was lost because of the facts of which complaint was made: *Russell v. Phelps*, 42 M. 377.

Further as to allegations of damage, and when damages must be averred specially, see DAMAGES, §§ 60-72; FALSE IMPRISONMENT, §§ 27-30.

254. In an action against a manufacturer of an elevator for an injury received from it while still in his possession, it was objected that the declaration did not sufficiently show that it was in defendant's possession. It did aver, however, that plaintiff went upon it "by command and at the request of said defendant," and the pleading was considered sufficient: *Necker v. Harvey*, 49 M. 517.

255. In a declaration in case for flowing land the averment that plaintiff was lawfully seized in fee and possession of the land flowed was held material to be proved as stated: *Lull v. Davis*, 1 M. 77.

256. A declaration for malicious prosecution must aver that the suit has in some manner been terminated: *Sutton v. Van Akin*, 51 M. 463.

A certain count held to charge malicious prosecution, not illegal arrest and false imprisonment: See MALICIOUS PROSECUTION, § 40.

257. An allegation that plaintiff "was lawfully possessed of one certain gray mare, and was lawfully possessed as aforesaid of two yearling colts," sufficiently avers the ownership of the property: *Husceig v. Tripp*, 20 M. 216.

258. Where a surety who has paid his principal's debt sues in replevin for an article to a lien upon which he has been subrogated his declaration need not allege an assignment: *Myres v. Yapple*, 60 M. 339.

259. A declaration in replevin for exempt property need not specifically set out the character of the property so as to show the exemption; it need only follow the form of declaring prescribed by H. S. § 8337, which is applicable to all courts: *Elliott v. Whitmore*, 5 M. 532.

260. But a declaration in trover against an officer for levying upon exempt property should set forth the facts showing that the property is exempt: *McCoy v. Brennan*, 61 M. 362.

Further as to declarations in trover, see TROVER, II, (a).

4. Declaring upon statute.

261. In declaring on a statute, where there is an exception in the enacting clause, the pleader must negative the exception; but where there is no exception in the enacting clause, but an exemption in a proviso to the enacting clause, or in a subsequent section of the act, it is matter of defence, and must be shown by defendant: *Attorney-General v. Oakland County Bank*, W. 90; *Myers v. Carr*, 12 M. 63; *Lynch v. People*, 16 M. 472; *People v. Phippin*, 70 M. 6.

262. The rule that one who relies on a statutory exception not shown by the enacting clause of the statute must bring himself within the exception by his pleadings is not always a rule of pleading, but is sometimes one of evidence; and it only requires the party who relies on the exception to present the facts in such form as the case demands: *Osburn v. Lovell*, 36 M. 246.

263. A common-law declaration upon a statute is bad if it does not in the same count state the circumstances necessary to support the action, and expressly refer to the provision counted on: *Howser v. Melcher*, 40 M. 185.

264. Pleading the statute is stating the facts which bring the case within it, and counting on it is making express reference to it by apt terms to show the source of right relied on: *Ibid*.

265. Where plaintiff's title to sue is statutory and the right of action depends on a special construction of facts defined in the statute, the declaration must aver the existence of such facts: *Chicago & N. E. R. Co. v. Sturgis*, 44 M. 538.

266. Where a thing is originally authorized by statute which could not be done at

common law, then, in pleading, everything must be averred which the statute requires to bring the act within it; but where a statute makes a writing necessary, in a case where it was not so at common law, then such an averment in pleading is not necessary: *Dayton v. Williams*, 2 D. 81.

267. There is a distinction, however, in this respect between a declaration and a plea; the latter must show that the contract was such as would sustain an action: *Ibid*.

268. Where the liability of a party results from the violation of a foreign statute, a party relying upon it in an action for damages on such liability must set out the statute and the facts showing a case within its provisions: *Great Western R. Co. v. Miller*, 19 M. 805.

269. More particularity is required in a declaration to recover a statutory penalty than in some other common-law actions in which general counts are allowed; and in the absence of any statutory provision to the contrary, it must set out, with substantial certainty, the facts to bring defendant within the terms of the statute, neither leaving out nor misstating any element of liability, and it must aver the obligation to have arisen under a statute: *Benalleck v. People*, 31 M. 200.

270. A declaration in a statutory action referred to the chapter of the statute by the wrong number, but otherwise cited it correctly, and was not demurred to. *Held* sufficient to support a verdict for plaintiff: *Achey v. Hull*, 7 M. 423.

271. A declaration under C. L. 1871, § 2148, to recover a penalty for a violation of the prohibitory liquor law, is insufficient on demurrer if it only refers generally to the statute, and not specifically to the section for a violation of which the action is brought; it ought, perhaps, to be so held, even on an objection taken on that ground to the admission of any evidence under it on the trial: *Benalleck v. People*, 31 M. 200.

272. An action was brought before a justice for the penalty of \$50 alleged to have accrued under "section 3640 of the Compiled Laws of 1882," this being the only reference to the statute. On appeal an amended declaration was filed, merely referring to the statute by section and chapter, and also by the compilers' section, which, however, did not correspond with the statute's section and chapter, nor with the section declared on in justice's court. *Held*, that as the prosecuting attorney, under H. S. § 8482, was only authorized to plead an indebtedness in this general way by referring to the section and chapter of the statute violated, the variance was fatal:

People v. Grand Rapids & W. P. R. Co., 64 M. 618.

273. The statute allowing general pleading upon statutes in certain cases does not apply to the action under H. S. § 8806 for treble damages where one has obtained restitution in forcible entry proceedings: *Howser v. Melcher*, 40 M. 185.

274. A declaration in an action under H. S. § 2119 for an injury caused by a dog must aver that it was so caused and must set it forth under the statute: *Monroe v. Rose*, 38 M. 347.

275. A declaration for damages arising from the neglect of a duty imposed by a general statute — *e. g.*, that requiring railroads to be fenced — need not be specially framed upon the statute or refer to it: *Grand Rapids & I. R. Co. v. Southwick*, 30 M. 444.

276. As the statute prohibiting sales of liquor to husbands, children, etc., in certain cases provides no form of remedy, a common-law declaration by the person injured is good: *Friend v. Dunks*, 37 M. 25; *Kehrig v. Peters*, 41 M. 475.

(e) *Profert and oyer.*

277. Of a sealed instrument set out in full in the declaration no further profert is necessary: *Regents v. Detroit Young Men's Society*, 12 M. 138.

278. In declaring upon a contract executed by agents on behalf of a corporation, they signing their own names and affixing their own seals, which contract is therefore to be regarded as the simple contract of the corporation, no profert need be made: *Ibid*.

279. In a suit by a school teacher on a contract of hire, the plaintiff is not bound to make profert of her certificate of qualification, and it is not error to allow her to give parol proof that she has one: *Manistee School District v. Cook*, 47 M. 112.

280. When a suit is brought in the first instance by an administrator the practice requires him to make profert of his letters by his declaration: *Vickery v. Beir*, 16 M. 50.

281. A suggestion of plaintiff's death entered of record does not, where the action is revived by his administrator, supply the want of profert, nor enable defendant to demand oyer: *Ibid*.

III. PLEAS.

In justices' courts, see JUSTICES OF THE PEACE, III, (d), 3.

As to rule to plead, see COURTS, §§ 175, 178.

As to entry and notice of rule to plead when suit is begun by declaration, see PROCESS, §§ 19-23, 26.

As to default for want of plea, see DEFAULT.

As to pleas in QUO WARRANTO, see that title, §§ 86-46, 51, 56, 57.

(a) *In general.*

282. Except where certain defects or defences are waived if not specially pleaded, a plea must set up matters not apparent from the declaration: *Hinman v. Eakins*, 26 M. 80.

283. The purpose of a plea is to tender an issue upon some fact not already in the case that proof may be taken in respect to it if the issue is accepted. But if the fact is in the case, and especially if it is so conclusively established by the record that no contrary averment would be admissible, a plea setting up the fact would be idle, and, instead of demurring to it, a motion should be made to strike it from the files: *People v. Harding*, 53 M. 481.

284. Declaration in an action on a judgment was served on one of two joint defendants and he appeared and pleaded. The other was not served, but at the term when the case was to be tried, and before trial, though after some depositions had been taken, he appeared and pleaded also. On plaintiff's motion his plea was stricken from the files. *Held* error: *Ralston v. Chapin*, 49 M. 274.

285. An affidavit that joint defendants have no joint property within the state is insufficient to sustain a motion to strike from the files a plea entered by one of them who has not been served with the declaration, as it does not negative the possibility that they may have such property when judgment is rendered: *Ibid.*

286. It seems that where counsel appear in the name of a party by whom they have not been retained, and put in a plea different from one that is afterward entered by counsel duly authorized, the opposite party is entitled to have the plea stricken from the files: *Arno v. Wayne Circuit Judge*, 42 M. 362.

287. If a plea in abatement was bad defendant is not prejudiced by overruling the objection that it ought to have been disposed of before going into the merits: *East v. Cain*, 49 M. 478.

(b) *Pleas in abatement.*

1. When allowable; what may or should be thus pleaded.

See JUSTICES OF THE PEACE, §§ 163, 164.

288. A plea in abatement, if admissible at all in a proceeding for bastardy, is not allow-

able after respondent has recognized to appear in the circuit: *Pangborn v. Smith*, 65 M. 1.

289. If a general demurrer has been filed, a plea to the jurisdiction presents an immaterial issue and should be stricken from the files: *Thompson v. Mich. Mut. Benefit Assoc.*, 52 M. 522.

290. The ordinary office of a plea in abatement in respect to a former suit pending is not to deny or put in issue the cause of action, but to object that it is already in course of litigation: *Belden v. Laing*, 8 M. 500.

291. Garnishment proceedings may be pleaded in abatement of an action brought by the principal defendant against the garnishee, but they are not an absolute bar unless judgment has been obtained against the garnishee: *Grosslight v. Crisup*, 58 M. 531.

292. Defendant in cross-replevin can plead the first writ in abatement: *Fisher v. Marquette Circuit Judge*, 58 M. 450.

293. As a general rule, the pendency of another suit, if good at all by way of plea, should be pleaded in abatement and not in bar: *Near v. Mitchell*, 28 M. 382; *Sullings v. Goodyear Co.*, 36 M. 818.

294. And this rule applies where such other suit is a garnishment proceeding: *Near v. Mitchell*, 28 M. 382.

295. Or where it is a suit pending in another state: *Wilcox v. Kassick*, 2 M. 165.

296. Pendency of a prior suit in which there could be no recovery because it was prematurely brought cannot be pleaded in abatement: *Blackwood v. Brown*, 84 M. 4.

297. Where a civil and a criminal action both lie, neither can be pleaded in abatement of the other: *Elliott v. Van Buren*, 33 M. 49.

298. The pendency of a foreclosure suit in equity is not pleadable in abatement to a suit at law on the debt: *Joslin v. Millsbaugh*, 27 M. 517; *Goodrich v. White*, 39 M. 489. And see ACTIONS, § 106.

299. It seems that objections to the title of a party suing as administrator should be raised by plea in abatement: *Bassett v. Shepardson*, 57 M. 428.

300. Matter that is merely in denial of the right of action is never pleadable in abatement, but must be pleaded in bar: *Morgan v. Butterfield*, 3 M. 615.

301. An objection to the jurisdiction of a court of general jurisdiction must be taken advantage of by plea in abatement: *Webb v. Mann*, 3 M. 189.

302. Misnomer in naming a corporation defendant should be pleaded in abatement: *Lake Superior Building Co. v. Thompson*, 32 M. 293; *Johr v. St. Clair Supervisors*, 38 M. 533.

As to when non-joinder of parties should or may be pleaded in abatement, see PARTIES, §§ 150-161.

2. Requisites.

303. A plea in abatement in a criminal case must be certain to every intent and be pleaded without any repugnancy; it should also have a proper conclusion and pray judgment of the indictment: *Findley v. People*, 1 M. 234.

304. Pleas in abatement are not favored, and certainty to every intent is required: *Wales v. Jones*, 1 M. 254; *Heyman v. Covell*, 36 M. 157.

305. A plea in abatement must have the highest degree of certainty and precision. Every allegation necessary to make out the case covered by it must be distinctly, and not inferentially, set forth: *Belden v. Laing*, 8 M. 500.

306. A plea in abatement must expressly state every fact necessary to support it, and exclude everything that would defeat it if alleged on the other side: *Dubois v. Hutchinson*, 40 M. 263.

307. A plea in abatement must in general set up matter not apparent from the declaration: *Hinman v. Eakins*, 26 M. 80.

308. A plea in abatement that does not give the plaintiff a better writ is bad: *Heyman v. Covell*, 36 M. 157; *East v. Cain*, 49 M. 473.

309. A plea in abatement to the jurisdiction must always show another forum where the rights involved have already become subject to judicial authority: *Heyman v. Covell*, 36 M. 157. See *Carew v. Matthews*, 41 M. 576.

310. In a suit commenced by attachment a plea in abatement was interposed that at the time of the commencement of the suit another suit was pending between the same parties for the same cause of action. *Held*, that the plea was bad for not stating that the former suit was still pending: *Wales v. Jones*, 1 M. 254; *Peir v. Yoare*, 12 M. 16.

311. When a plea in abatement averred that another suit was commenced at the same time, upon and for the not performing the same identical promises and undertakings, without adding in the said declaration in this present suit mentioned, or other equivalent words, it was held bad on that account: *Wales v. Jones*, 1 M. 254.

312. A plea in abatement to an action of trespass brought in the name of one plaintiff is bad in merely stating that said plaintiff, "before and at the time of the commencement of the suit," was part owner of the premises with another person specified. It should show that

some one besides plaintiff had an interest at the time of the trespass: *East v. Cain*, 49 M. 473.

(c) Pleas in bar.

1. Generally.

313. A plea in bar is allowable in the court's discretion after a plea in abatement is overruled: *McOmber v. Holmes*, 41 M. 417.

314. Special pleas in bar are forbidden by the revision of 1846: *Cresinger v. Reed*, 25 M. 450.

315. The plea *ne unques executor* is properly a plea in bar: *Vickery v. Beir*, 16 M. 50.

316. A former judgment must be pleaded in bar: *Briggs v. Milburn*, 40 M. 512; *Porter v. Leache*, 56 M. 40.

317. A mere agreement to arbitrate cannot be pleaded in bar: *McGunn v. Hanlin*, 29 M. 476.

318. The plea of *non damnificatus* is not the proper plea to a declaration upon a covenant to indemnify, etc.: *Wheelock v. Rice*, 1 D. 267.

319. Where to a declaration in *assumpsit* the defendant pleaded *non assumpsit* and also *not guilty*, and a jury trial had been had, it was held that the plea of not guilty might be treated as a nullity and stricken from the record: *The Milwaukee v. Hale*, 1 D. 306.

320. A plea in bar that the cause of action did not accrue within six years before filing amended declaration is void: *Wilcox v. Kasick*, 2 M. 165.

That the defence of the statute of limitations is available without framing an issue on the trial of an appeal from the allowance of a claim against a decedent's estate, see LIMITATION OF ACTIONS, § 201.

2. The general issue; what defences admissible thereunder.

As to what is admitted or waived by pleading the general issue instead of demurring, see *infra*, IX, (c).

321. The general issue could not be pleaded in a cause in the county court, or in the circuit court, under the act to regulate and define the jurisdiction of those courts (S. L. 1848, p. 286). The pleadings in both courts must conform to the provisions of R. S. 1846, ch. 92: *Porter v. Kimball*, 1 M. 239.

322. The general issue, under H. S. §§ 7361, 7362, in all civil actions traverses every material averment in the plaintiff's declaration which must be proved, whatever the nature

or form of the action may be: *Kinnie v. Owen*, 1 M. 249.

323. The statutory plea of the general issue is a complete denial of the plaintiff's cause of action, and calls upon him to prove it: *Ingalls v. Eaton*, 25 M. 32.

324. The statutory general issue, like the plea of not guilty, is a denial of all the material allegations in the declaration, and is sufficient to enable defendant to contest all such allegations, and to put the plaintiff upon the proof of all or any of them: *Rawson v. Finley*, 27 M. 268.

325. Under the general issue defendant may deny whatever the plaintiff is obliged to prove as an essential part of his case: *Edwards v. Chandler*, 14 M. 471.

326. The statutory general issue is as broad as at the common law, where it put at issue everything that plaintiff had to show to make out his case: *Osburn v. Lovell*, 86 M. 250.

327. Plea of the general issue is proper where the claim made is not well founded in fact; and after a verdict of no cause of action for want of authority in plaintiff to bring the suit, defendant is not estopped from insisting upon such want of authority as a defence: *Denver v. White River Log & B. Co.*, 51 M. 472.

328. Former judgment cannot be shown under the general issue alone: *Briggs v. Milburn*, 40 M. 512; *Porter v. Leache*, 56 M. 40.

329. A defence in the nature of a former recovery cannot be set up under the general issue alone: *Tabor v. Van Vranken*, 39 M. 793.

330. In an action upon an appeal bond the satisfaction of the judgment after joinder of issue cannot be shown unless specially pleaded: *Souvais v. Leavitt*, 53 M. 577.

331. The pendency of garnishment proceedings cannot be proved under the general issue: *Near v. Mitchell*, 23 M. 382.

332. On appeal from the probate of a will a special plea is unnecessary to put in issue the testator's sanity: *Taff v. Hosmer*, 14 M. 309.

333. The general issue in *assumpsit*, as a general rule, denies and puts in issue every fact and combination of facts essential to the plaintiff's cause of action as set up in the declaration: *Wilson v. Wagar*, 26 M. 452.

334. Plea of the general issue to an implied *assumpsit* denies the cause of action altogether, and leaves the plaintiff to prove not only performance, but the understanding on which it was based. It would be different if only payment or other discharge were pleaded: *Berringer v. Lake Superior Iron Co.*, 41 M. 805.

335. Under the general issue in *assumpsit* the defence of payment can always be made: *Olcott v. Hanson*, 12 M. 452; *Burt v. Olcott*, 33 M. 178; *Huntoon v. Russell*, 41 M. 316; *Brennan v. Tietzort*, 49 M. 397.

336. Defences to an action of *assumpsit* going to the existence of any promise having legal force are admissible under the general issue: *Snyder v. Willey*, 33 M. 483.

337. Under the general issue in an action for price, defendant may prove that the article delivered was not the article he purchased: *Grieb v. Cole*, 60 M. 897.

338. In an action upon the common counts for use and occupation the tenant can, under the general issue, set up a new agreement: *Conkling v. Tuttle*, 52 M. 630.

339. In *assumpsit* for the sale of chattels, evidence that they were sold in violation of the United States revenue laws is admissible under the general issue: *Dean v. Chapin*, 23 M. 275.

340. In pleading the statutory general issue to a declaration upon the money counts on an accepted order, it is proper to show, without giving special notice of such a defence, that the instrument sued on was never valid, as, by evidence that the sole consideration for it was the sale of spirituous liquors, contrary to the prohibitory law: *Hill v. Callaghan*, 31 M. 424.

341. Where a written contract is sued upon, a variance in name may be taken advantage of under the general issue, and the misnomer need not be pleaded in abatement: *Gilbert v. Hanford*, 13 M. 40.

342. The defence that the one who sues a negotiable promissory note did not obtain the title or the right to sue before suit brought is admissible under the general issue: *Hovey v. Sebring*, 24 M. 232; *Reynolds v. Kent*, 38 M. 246.

343. In an action on a promissory note against two joint makers, one cannot show under the general issue without notice that he signed as surety only, and was released by an unauthorized extension of time to the principal debtor: *Rawlings v. Cole*, 67 M. 431 (Nov. 3, '87).

344. Where the execution of a promissory note is denied on oath, the general issue in an action thereon will admit evidence tending to show that defendant made no such contract as was counted upon, and that he was fraudulently got to sign the note when he thought he was signing something else: *Soper v. Peck*, 51 M. 563.

345. A defence arising out of fraud or misrepresentation cannot be shown under the

general issue without notice: *Miller v. Finley*, 26 M. 249.

346. Where action is brought on a note given for an interest in a patent issued by the United States, evidence of the pecuniary worthlessness of the patent is not admissible under the general issue: *Ibid*.

347. Testimony of misrepresentation and fraud in procuring the note sued on is inadmissible under a plea of the general issue with notice merely that no consideration was given for the note: *McCabe v. Caner*, 68 M. 183 (Jan. 12, '88).

348. Unless notice is filed with the plea, the defence is inadmissible that plaintiff, an attorney, bought for prosecution, contrary to H. S. § 7185, the demand sued on (H. S. § 7189): *Randall v. Baird*, 66 M. 312.

349. In an action on an insurance policy such a defence as that plaintiff (the assured) burned his own property must be specially averred: *Residence F. Ins. Co. v. Hannawold*, 37 M. 103.

350. Where a travelling salesman sues for his salary, defendant cannot, under the general issue, show representations made by plaintiff as to his ability to sell goods, and show what other agents of defendants had done: *Champlain v. Detroit Stamping Co.*, 68 M. 288.

351. Under the general issue in covenant defendant may show that the deed is not his by proving a lack of power in the agent who executed it in his behalf: *State Prison Agent v. Lathrop*, 1 M. 438.

352. In actions of tort, everything which may properly be considered by the jury in mitigation of damages may be given in evidence under the general issue: *Deleuran v. Bates*, 1 M. 97; *Osburn v. Lovell*, 36 M. 246.

353. The nature of a personal injury, in respect to being permanent or temporary, may be shown under the general issue in an action of case therefor: *Goodale v. Portage Lake Bridge Co.*, 55 M. 413.

354. In an action of attachment under the log-lien law for services performed by plaintiff in driving defendant's logs, an unliquidated claim made by a third person who had logs in the river above plaintiff's drive, and who, in consequence of plaintiff's not putting on a sufficient force to keep the river unobstructed, put men upon plaintiff's drive, cannot be shown under the general issue without notice: *Shaw v. Bradley*, 59 M. 199.

355. In ejectment the plea of the general issue without notice is sufficient to admit the defence of title by adverse possession: *Miller v. Beck*, 68 M. 76.

356. On appeal from a justice in an action of replevin the general issue will allow defendant to show that he defends in official character as special administrator (H. S. § 8839): *Singer Manuf. Co. v. Benjamin*, 55 M. 380.

As to what is covered by general issue in replevin, trespass or trover, see REPLEVIN, §§ 250-254; TRESPASS, §§ 72-81; TROVER, II, (b).

As to what may be shown under the general issue in actions for libel or slander, see LIBEL, § 103; SLANDER, §§ 39, 40, 54, 55, 59-63.

3. Notice of special defence.

As to notice of recoupment or of set-off, see DAMAGES, X, (b); SET-OFF, V.

As to notice of special defence in action on policy, see INSURANCE, §§ 309-315.

357. Special pleas, though abolished by H. S. § 7361, may properly be allowed to stand in place of the notice of defence, where notice is necessary (§ 7363): *Benedict v. Smith*, 48 M. 593.

See as to special pleadings, *supra*, § 13.

358. Notice must be given under the statutory general issue of any defence required at common law to be specially pleaded: *Rawlings v. Cole*, 67 M. 431.

359. A notice of special matter to be given in evidence must contain all the substantial requisites necessary to constitute a special plea which would be good on general demurrer: *Thompson v. Bowers*, 1 D. 321. (This, however, was under the former system of pleading. See following cases.)

360. Notice of special matter of defence to be annexed to the plea of the general issue need not contain the substance of a special plea, but is sufficient if it briefly state the precise nature of the matter of defence: *Cresinger v. Reed*, 25 M. 450.

361. Notice of special defence attached to a plea of the general issue is not required to be as precise as special pleading: *Farmers' Mutual Fire Ins. Co. v. Crampton*, 43 M. 421.

362. A notice that apprises the plaintiff with reasonable certainty of the matter of defence, so that he may not be taken by surprise on the trial, is sufficient under the statute: *Rosenbury v. Angell*, 6 M. 508; *M'Hardy v. Wadsworth*, 8 M. 349. And see *Porter v. Kimball*, 1 M. 239.

363. The defence of fraudulent misrepresentations is as available under a notice of special defence, stating the falsity of the representations and that the plaintiff thereby deceived the defendant in the purchase, as under a notice stating in addition precisely and technically that the plaintiff knew the representa-

tions to be false when he made them; an allegation of a *scienter* is unnecessary: *Broune v. Moore*, 32 M. 254.

364. A notice that "three several writs of attachment were issued out of the circuit court for the county of L., and under the seal thereof in due form of law," giving the names of the parties and dates and command of the writs, and the taking of the property by virtue thereof, is sufficient without alleging the making of the affidavits which authorized the attachments; and the affidavits as well as the writs may be given in evidence: *Rosenbury v. Angell*, 6 M. 508.

365. Title and license are properly set up in the notice under the general issue in trespass: *Druse v. Wheeler*, 22 M. 439; *Walters v. Tefft*, 57 M. 390.

366. The office of a notice attached to a plea is to present tangible issues, and not to introduce matters that form no part of the issue. It cannot make them relevant or material: *Proctor v. Houghtaling*, 37 M. 41.

367. Where a special notice is attached to the plea of the general issue, and the proof offered thereunder is sufficient to establish a defence, the defendant is limited to such matters as may be introduced under the plea itself: *Waldo v. Waldo*, 52 M. 94.

As to notice of justification in actions for libel or slander, see LIBEL, §§ 59, 60, 105-107; SLANDER, §§ 25, 26, 39, 43, 53.

As to amendment of notice, see *infra*, §§ 609-613.

(d) *Pleas puis darrein continuance.*

368. A plea *puis darrein*, when proper at all, may serve in place of notice of defence: *Snyder v. Quarton*, 47 M. 211.

369. A plea of estoppel *puis darrein continuance*, however defective in frame and substance, must be entertained if defendant rests his case entirely upon it: *Whittemore v. Stephens*, 48 M. 573.

370. A plea of estoppel must be properly framed as such, especially in opening and closing, and it must set forth a claim that the plaintiff should not be admitted to make use of what the estoppel would exclude. The matter of estoppel alleged must be material and traversable, and if a judicial decision is relied on therefor, it must be so averred; and the decision must have been in a matter *coram judice*: *Ibid.*

371. A plea of estoppel based on a judicial act which it does not aver as matter of estoppel in itself, but merely introduces as evidence

and by way of argument and as a basis for a deduction, presents an issue which is a matter of legal inference only, and not traversable: *Ibid.*

372. After a joint plea to the merits by two defendants, it was held that one of them might plead severally, *puis darrein continuance*, his discharge in bankruptcy subsequently obtained. But such plea would be an abandonment by him of the former joint plea, which would thereafter stand as the several plea of the other defendant: *Wheelock v. Rice*, 1 D. 267.

373. At common law a plea *puis darrein* destroyed the issue previously formed and required the forming of a new one by replication or otherwise: *Johnson v. Kibbee*, 36 M. 269.

374. H. S. § 7361, in abolishing special pleas, was not meant to deprive defendant of the right to make a special defence of matters arising after the filing of the plea of the general issue; and § 7363, in requiring notice of special matters of defence to be annexed to the plea of the general issue, does not require notice to be given of matters which, if specially pleaded, would be inconsistent with the general issue; it does not therefore apply to pleas *puis darrein continuance*: *Ibid.*

375. A plea *puis darrein continuance* supersedes a previous plea to the general issue with notice of set-off, and places the issue entirely upon the new plea: *Whittemore v. Stephens*, 48 M. 573.

376. Matter in abatement arising after the suit has been commenced should be pleaded *puis darrein*: *Swartwout v. Michigan Air Line R. Co.*, 24 M. 389.

377. A plea *puis darrein continuance* that plaintiff has assigned his claim since the filing of the referee's report thereon is held to present an immaterial issue and to be properly disregarded: *Moon v. Harder*, 38 M. 566.

378. A plea of payment of a judgment in garnishment *puis darrein continuance* was held good where a former plea, alleging that defendant had been garnished, had been withdrawn by leave of the court and the plea of payment on a judgment in the same proceeding in garnishment had been made in lieu of it: *White v. Kent Circuit Judge*, 47 M. 645.

379. A plea *puis darrein continuance* is either in abatement or in bar; and when such a plea interposes the special defence that defendant has been garnished as plaintiff's debtor since the beginning of suit, it is a plea in abatement: *Grosslight v. Crisup*, 58 M. 531.

380. Where defendant in a pending action is garnished in a suit brought by a third per-

son against the plaintiff, he should as soon as possible plead the garnishment proceedings in abatement of the first suit by plea *puis darrein* or by filing notice of the proceeding as a special defence under circuit court rule 106: *Ibid*.

381. Where a plaintiff suing for the purchase price of lumber attached the lumber, and, having indemnified the sheriff, sold it, *held*, that defendant's notice of recoupment should have the same effect as a plea *puis darrein continuance*, and that the value of the lumber at the time plaintiff converted it must be treated as a payment upon his claim: *Jenkinson v. Monroe*, 61 M. 454.

382. Where, in an action of trover, a plea *puis darrein* that the property has been taken from defendants on an attachment against the plaintiff does not aver that the attachment suit has been disposed of or the property applied to plaintiff's use, it will not sustain the introduction of the attachment proceedings in evidence: *Erie Preserving Co. v. Witherspoon*, 49 M. 377.

383. Tax-deeds obtained by defendant in ejectment after issue joined cannot; if admissible at all, be introduced without something on the record in the nature of a plea *puis darrein*: *Hurd v. Raymond*, 50 M. 369.

384. A conveyance of the premises by plaintiff in ejectment to a third party pending suit is not admissible in evidence for the defence without a special notice in the nature of a plea *puis darrein*: *Jenney v. Potts*, 41 M. 52.

385. Where the plaintiff introduces a contract as a necessary part of his case, the defendant can show when and how it was performed, even though performance had not been pleaded *puis darrein continuance*: *Haven v. Beidler Manuf. Co.*, 40 M. 286.

386. Where plaintiff dies and his administrator is substituted, defendant need not plead *puis darrein* so as to put the representative capacity specially in issue: *Vickery v. Beir*, 16 M. 50.

387. The discretion of the trial court in excluding a plea *puis darrein* will not be reviewed unless it has been abused; and such abuse does not appear where there was a long delay in filing the plea and until a trial and submission thereon of plaintiff's case: *Souvais v. Leavitt*, 53 M. 577.

388. Where plaintiff in replevin is made defendant in cross-replevin by the defendant in the former suit, he need not plead *puis darrein* a judgment on *certiorari* reversing the judgment rendered against him in the former suit: *Clark v. West*, 23 M. 242.

IV. REPLICATIONS.

In chancery, see EQUITY, V, (h).

In QUO WARRANTO, see that title, §§ 47-52.

389. New matter stated as inducement to a traverse in a replication must appear to be sufficient in substance to defeat the other party's allegation, and if a defective title be shown the inducement will be bad: *Kinzie v. Farmers', etc. Bank*, 2 D. 105.

390. What certainty required in, and other requisites of a traverse: *Ibid*.

391. Replication to a notice of defence under the old rules was not necessary where the matters set out in the notice were admissible in evidence under the general issue: *Craig v. Grant*, 6 M. 447.

392. There can be no replication to the notice annexed to the plea of the general issue, but plaintiff goes to trial upon the declaration, plea and notice: *McFarlane v. Ray*, 14 M. 465.

393. And, therefore, a plaintiff in trespass *quare clausum*, who has declared generally, cannot have the benefit that a new assignment in a replication would give him, but he must amend his declaration: *Ibid*.

394. Where suit was brought for a debt, defendant pleaded that the judge in bankruptcy had given him a certificate that it had been adjudged that he had performed a composition with his creditors and was entitled to a discharge. *Held*, that a replication which merely traversed the effect of the adjudication and discharge tendered an issue that was immaterial and not triable by a jury, and that if plaintiff thought actual performance of the composition was necessary to a defence, he should have demurred to the plea. But where he made such replication instead, defendant, if he relied on the certificate to defeat the action, should have demurred to it instead of going to trial on the issue: *Whittemore v. Stephens*, 48 M. 573.

395. That which in a replication would not be a departure in pleading may be given in evidence in reply to a defence under the general issue: *Caldwell v. Gale*, 11 M. 77.

V. DEMURRERS.

In chancery, see EQUITY, V, (d).

In QUO WARRANTO, see that title, §§ 53-57.

As to what is admitted by demurrer, see *infra*, IX, (b).

396. Oral demurrers in the circuit court are unauthorized: *Jenks v. Brown*, 38 M. 651.

397. An objection of form and not substance should be specially demurred to: *Mayor v. Park Commissioners*, 44 M. 602.

398. A ground of demurrer should be so stated as to apprise the court of the real objection, and if it is not, the party demurring can claim nothing under it: *Kellogg v. Hamilton*, 48 M. 289.

399. H. S. § 7858, and circuit court rule 84, require every objection, either of form or matter of substance, to be specified in the demurrer. If this is not done, and the declaration sets forth a cause of action, the demurrer will be overruled: *Adrian Water Works v. Adrian*, 64 M. 584.

400. A demurrer and a plea to the general issue are inconsistent, as the first admits what the last denies; demurrer should be taken before going to issue on the fact: *Cicotte v. Wayne County*, 44 M. 173.

401. A plea to the merits excludes the right to demur and must be withdrawn if the defendant wishes to demur to the same counts; there cannot be issues of fact and of law on the same counts: *Ibid*.

402. A plea to the merits filed after demurrer waives, supersedes or overrules it: *Ibid*.

403. A demurrer on technical grounds does not affect the sufficiency of a declaration in matters of substance: *Enright v. Hartsig*, 46 M. 469.

404. Where the pleading is correct, but an error occurs in the copy served, a demurrer will not be sustained if it appears from the circumstances that the party demurring was aware of the error, and therefore was not misled by it: *People v. Miller*, 15 M. 354.

405. Action against a common carrier of passengers by steamboat for refusing plaintiff a cabin passage. Notice of defence that, by the regulations and established course of business of the boat, persons of plaintiff's race are not allowed the use of the cabin as passengers; which regulation and course of business are averred to be reasonable. Demurrer to the notice. *Held*, that the reasonableness of such a regulation was a mixed question of law and fact, to be found by the jury on the trial, under the instructions of the court; and could not be determined on demurrer: *Day v. Owen*, 5 M. 520.

406. Whether the question of plaintiff's right to use a particular name in bringing suit can be raised by demurrer, *quere*: *Watson v. Watson*, 49 M. 540.

407. On demurrer to the replication a formal defect in the plea will not be noticed: *People v. Jackson & M. P. R. Co.*, 9 M. 285.

408. A motion to strike from the files is the proper proceeding for getting rid of a defective demurrer; it is not good practice to

move that it be not heard: *Comstock v. McEvoy*, 52 M. 324.

As to judgment on demurrer, see JUDGMENTS, §§ 6-9a.

VI. AFFIDAVITS; BILLS OF PARTICULARS.

As to AFFIDAVITS generally, see that title.

As to affidavit to prevent inquest, see DAMAGES, §§ 479, 480.

(a) *Affidavit of amount due.*

409. The affidavit of amount due with copy of account annexed, which, under H. S. § 7525, constitutes *prima facie* evidence of indebtedness if served with copy of the declaration or other process commencing suit, was, prior to the amendment to said § 7525, allowing it to be made within ten days next preceding the filing of declaration, etc., of no avail, unless made substantially at the time of commencing suit: *McHugh v. Butler*, 39 M. 185; *Locke v. Farley*, 41 M. 405.

410. Said affidavit is not evidence unless the return shows it was served at the same time with the declaration or process by which suit was commenced; and there is no presumption that because it was served the same day it was served at the same time: *Gordon v. Sibley*, 59 M. 250.

411. It seems that an affidavit that the "annexed account is just, due and unpaid" substantially complies with H. S. § 7525, requiring the affidavit to set out that the account "is justly owing and due": *Lamb v. McGowan*, 66 M. 615.

412. If plaintiff rests his case on an ineffectual affidavit he cannot, after the defence has rested, go back and prove his demand in the ordinary way as matter of right: *McHugh v. Butler*, 39 M. 185.

413. But where defendant, without being misled, allows an irregular affidavit to be introduced without objection, he cannot, after the proofs are closed, object for the first time that it proves nothing: *Locke v. Farley*, 41 M. 405.

(b) *Affidavits of non-execution.*

414. A recognizance of special bail is not such a "written instrument" as is intended by circuit court rule 79, which provides that in any action brought upon a written instrument the plaintiff shall not be put to the proof of its execution, or the handwriting of the defendant, unless its execution be denied by affidavit: *Elliott v. Green*, 10 M. 113.

415. H. S. §§ 6875, 6928, in regard to the

proof of execution of written instruments declared upon or set off in justices' courts, do not apply to cases which originate in the circuit court: *Spicer v. Smith*, 28 M. 96.

416. Circuit court rule 79 does not apply where no opportunity has been given to deny execution; as, where an action on a note had been begun before a justice by declaring on the common counts only, and on being appealed to the circuit a new declaration was filed with a copy of the note attached, but without giving the defendant an opportunity to plead anew: *McMillen v. Beach*, 38 M. 397.

417. Said rule does not apply on an appeal from justice's court where the pleadings are the same as before the justice, and where no new issue has been framed in the circuit: *Bauer v. Wasson*, 60 M. 194.

418. The object of said rule is to enable plaintiff to make out a *prima facie* case, not a conclusive one: *Freeman v. Ellison*, 87 M. 459.

419. The "execution" of a note in the meaning of said rule 79 includes only its actual making and delivery: *Ibid.*

420. Denial by affidavit of the execution of an instrument cannot be required if the instrument is not set up in the declaration: *Montross v. Roger Williams Ins. Co.*, 49 M. 477.

421. Therefore, plea of the general issue is sufficient where a declaration upon an insurance policy alleges renewal but does not purport to set up a written one: *Ibid.*

422. An affidavit of the non-execution of an instrument sued upon should not be construed technically, but should be held sufficient if evidently intended in good faith to meet the plaintiff's case: *McCormick v. Bay City*, 23 M. 457; *Haight v. Arnold*, 48 M. 512.

423. In a suit upon municipal bonds issued under a statute requiring that they shall be issued within sixty days after the vote authorizing them, an affidavit filed with the plea of the general issue denying that the bonds were issued within the sixty days puts in issue the question of their validity if they were issued after that time: *Chickaming v. Carpenter*, 106 U. S. 663.

424. Where a written instrument is sued upon, a failure to deny its execution by affidavit operates, under rule 79, as an admission of the delivery thereof, as the execution includes delivery: *People v. Johr*, 22 M. 461.

425. Under a declaration counting expressly upon a replevin bond, its execution is admitted under rule 79, unless denied by affidavit: *Jennison v. Haire*, 29 M. 207.

426. In an action on a contract that is set out *verbatim* in the declaration, and alleged to have been jointly executed, the plea of the

general issue, without any affidavit, admits the execution of the contract in manner and form as alleged: *Curran v. Rogers*, 35 M. 231.

427. Where a declaration counts on a policy of insurance, and no affidavit is filed denying its execution, the execution of the policy is thereby, under rule 79, admitted, and no evidence need be introduced to prove it: *Clay F. & M. Ins. Co. v. Huron Salt Co.*, 31 M. 346.

428. The averment in a declaration on an insurance policy that it was made and issued to plaintiff as described is admitted if not denied by affidavit filed with the plea: *Simon v. Home Ins. Co.*, 58 M. 278.

429. Where no affidavit of non-execution has been filed, defendant in an action on an insurance policy that had been renewed cannot show that plaintiff, who was defendant's agent, had fraudulently renewed the policy after the loss; the policy and renewal constituted the contract whereon the action was brought: *Peoria Ins. Co. v. Perkins*, 16 M. 880.

430. Under rule 79, if one who is sued for rent omits to deny on oath the execution of the lease, he cannot make any defence inconsistent with its execution: *Jacobson v. Miller*, 41 M. 90.

431. In suit upon an indemnity bond no proof is necessary of its execution when not denied by affidavit: *Lee v. Wisner*, 38 M. 82.

432. A plea of the general issue without affidavit would not admit the execution of an unsealed obligation when a sealed one is declared on: *McCormick v. Bay City*, 23 M. 457.

433. Failure to file an affidavit denying the execution of a written instrument does not prevent the showing that such instrument, though dated Jan. 2, was in fact made Sunday, Jan. 1: *Ames v. Quimby*, 106 U. S. 842.

434. The want of an affidavit denying the execution of a written instrument which was executed in duplicate and upon which a claim of set-off is based does not preclude plaintiff from showing that his duplicate differs in its contents from the one retained by defendant: *Ibid.*

435. The court has discretion to allow, or refuse to allow, the filing of an affidavit of non-execution after the proper time, and may impose conditions upon such permission: *Tupper v. Kilduff*, 26 M. 394; *Polhemus v. Ann Arbor Savings Bank*, 27 M. 44.

436. Refusal of leave to deny execution of note on affidavit, after appeal from justice's court, is discretionary: *Chicago & N. E. R. Co. v. Edson*, 41 M. 673.

437. The filing of an affidavit of non-exe-

cution ought to be allowed at any stage of a cause if injustice will result from excluding it: *Freeman v. Ellison*, 37 M. 459.

Further as to denial and effect of failure to deny on oath execution of written instrument, see *BILLS AND NOTES*, §§ 274-298; *JUSTICES OF THE PEACE*, §§ 213, 214.

(c) *Bills of particulars.*

Excluding bill of particulars of set-off, when an abuse of discretion, see *JUSTICES OF THE PEACE*, § 172.

438. A bill of particulars cannot be required in an action on the case for consequential injuries: *Everett v. Marquette Circuit Judge*, 39 M. 437; *Kehrig v. Peters*, 41 M. 475.

439. Nonsuit cannot be ordered for failure to file a bill of particulars in an action for slander, if the action was begun by affidavits to hold to bail, in which the facts were fully set out; no more can be done than to limit the plaintiff to the cases set out in the affidavits: *Gibbs v. Superior Court Judge*, 53 M. 496.

440. A bill of particulars is not demandable of right by a garnishee: *Strong v. Hollon*, 39 M. 411.

441. Granting an order for a bill of particulars in a criminal prosecution for embezzlement is usually discretionary and refusal is not assignable as error: *People v. McKinney*, 10 M. 54.

442. Omission to file a bill of particulars is unimportant if defendant, by demanding one, could preclude any surprise, and if plaintiff's case proceeded throughout upon the theory on which he recovered: *Berringer v. Cobb*, 58 M. 557.

443. A bill of particulars that has been properly demanded is not waived by pleading or noticing the case for trial: *Peterson v. Tilden*, 44 M. 168.

444. Where a plaintiff refuses to comply with a proper demand for a bill of particulars, an objection to his evidence is properly sustained: *Ibid.*

445. Where a bill of particulars in an action on the common counts states the dates and amounts of the several sales and deliveries to the defendant of merchandise to be sold on commission, it is sufficient to indicate the transactions from which arose the claim for money had and received; the claim on account stated, if growing out of these dealings, is governed by the same rule: *Freehling v. Ketchum*, 39 M. 299.

446. In an action on the common counts a bill of particulars as full as the accounts customarily rendered among merchants when

they have previously sent invoices is sufficient if not objected to, or if no further bill is called for: *Ibid.*

447. The office of a bill of particulars is to prevent surprise by informing the opposite party of the causes of action to be relied on upon the trial which are not specially set out in the declaration: *Davis v. Freeman*, 10 M. 188; *Mason v. Scio School District*, 34 M. 228; *Wright v. Dickinson*, 67 M. 580.

448. A bill of particulars is not part of the declaration, though it may have the effect of a pleading in so far as it restricts the proof; its purpose is to secure such information as will enable the parties to make intelligent preparation for trial: *Cicotte v. Wayne County*, 44 M. 173.

449. A declaration on the common counts is not made demurrable by the bill of particulars: *Ibid.*

450. Pleadings are not amended by service of a bill of particulars, nor is the issue changed by amending the bill; and a plea or demurrer to it would be anomalous: *Ibid.*

451. A bill of particulars, in an action for wages on a labor contract, cannot cover money returned by plaintiff to defendant, as a loan, after receiving it as payment: *Judd v. Burton*, 51 M. 74.

452. Where the bill in an action for a balance remaining in the hands of an officer enumerates sundry items as received by defendant, and adds that the specific demand sought is a specified balance with interest, there is no error in permitting inquiry as to sums which defendant has received but which vary from those specified in the bill: *Mason v. Scio School District*, 34 M. 228.

453. There can be no recovery for items not in the bill of particulars, nor for more than it alleges: *Bennett v. Smith*, 40 M. 211.

454. But payments on plaintiff's demand may be shown though not embraced in the bill of particulars of defendant's set-off: *Olcott v. Hanson*, 12 M. 452.

455. Where suit is brought for the value of labor, and a bill of particulars, filed under a notice of set-off and recoupment, gives no intimation of damages for breach of the contract of hire, evidence of such damages is inadmissible: *Ritter v. Daniels*, 47 M. 617.

456. A bill of particulars filed under a declaration in *assumpsit* on the common count for money had and received pointed out that plaintiff sought to recover back money paid without consideration. *Held*, that evidence was admissible on plaintiff's part to show that a contract was void which was not alleged to be so in the bill of particulars. Such bill is

for the purpose of avoiding surprise at the trial, and such evidence could not surprise defendant: *Wright v. Dickinson*, 67 M. 580 (Nov. 10, '87).

457. A notice of recoupment is not in the nature of a bill of particulars and does not restrict a notice of set-off contemporaneously filed: *Ferguson v. Millikin*, 42 M. 441.

That a bill of particulars may suffice as an allegation of an assignment, see *supra*, § 193.

As to amendment of bill, see *infra*, §§ 614, 615.

VII. VARIANCE BETWEEN ALLEGATIONS AND PROOF; WHAT PROVABLE UNDER PARTICULAR ALLEGATIONS.

(a) *In general.*

As to what defences are admissible under the general issue, see *supra*, §§ 324-356.

As to when plea *puis darrein* is needed to sustain proof of matters since last continuance, see *supra*, §§ 383-388.

458. The evidence offered must correspond with and support the material and necessary averments in the declaration or plea: *Lull v. Davis*, 1 M. 77.

459. Where, in pleading, a writ is alleged to have *issued*, or a written instrument to have been *made*, on a certain day, and the writ or instrument, when offered in evidence, *bears date* a different day, this is no variance: *Lothrop v. Southworth*, 5 M. 436.

460. It is not a material variance from a judgment noticed as special matter of defence that the record of judgment offered in defence varied slightly in the amount, and had been so amended as to strike out the name of one of the parties against whom it was rendered, he having been an indorser and not served with the declaration: *Arnold v. Nye*, 23 M. 286.

461. Where a claim against an estate is for a special deposit of a quantity of government and state bonds with a firm of which decedent was a member, testimony is fatally defective which, while tending to show the deposit of bonds, does not identify their character: *Hatheway's Appeal*, 52 M. 112.

462. The plaintiffs, by their declaration, claimed the premises as trustees "to sell the said premises, and apply the moneys which they should obtain to the payment of certain debts" of one B. The declaration of trust put in evidence on the trial, and signed by B., provided for the payment of certain notes signed by another person and to which B. was not a party. Held, that it was fairly to be in-

ferred that B. was in some way bound for the payment of these notes; and if not, that his providing for their payment rendered them so far his debts as to satisfy the averment in the declaration: *Ives v. Kimball*, 1 M. 308.

463. Documentary evidence of the existence of a corporation under the name of "The West River National Bank of Jamaica," described as located in the town of Jamaica, county of Windham and state of Vermont, is admissible, under the general issue, to prove the corporate existence of the plaintiff styled in the declaration "The West River National Bank of Jamaica, Vermont:" *Thatcher v. West River National Bank*, 19 M. 196.

464. The testimony produced in support of a case must be considered together, and, if not inconsistent, the fact that one witness knows nothing of details shown by other evidence is no reason for rejecting such details in order to make the testimony support the declaration: *Kroll v. Ten Eyck's Estate*, 48 M. 230.

465. Testimony that is not within the averments of the pleading is objectionable: *Parker v. Armstrong*, 55 M. 176.

466. Recovery cannot be grounded upon a fact not counted upon as a ground of recovery in the declaration: *Williamson v. Haskell*, 50 M. 364.

467. When a declaration sets forth separate causes of action, one of which is statutory, and the other at common law, neither can be established except by facts proper to it: *Bottomley v. P. H. & N. W. R. Co.*, 44 M. 542.

468. Where, in an action for damages for breach of contract, the breach relied on consisted in suing out an injunction, the decree in the injunction suit would not be admissible in bar of the action if it had not been set up or relied on in the pleadings: *Sullings v. Good-year Co.*, 36 M. 313.

469. In an action against a sheriff for failure to execute a *capias ad respondendum*, evidence as to a prosecution of the defendant in the arrest proceedings is not admissible, when the pleadings do not present the issue: *Hatch v. Saunders*, 66 M. 181.

470. If a declaration on a contract is on the common counts and there is no bill of particulars, plaintiff has a right to go to the jury on any contract that will sustain a right of recovery, and is not confined to a particular contract as sworn to by himself, if that varies from the one he actually performed: *Engle v. Campbell*, 42 M. 565.

471. Under a declaration on the common counts in *assumpsit* by a subcontractor who has fully performed his part of a written contract between himself and a contractor for

the grading of a road-bed, he may prove fraud on the contractor's part in obtaining the contract, and fraud and collusion between such contractor and the engineers in charge in estimating the amount of plaintiff's work: *Bush v. Brooks*, 70 M. 446.

(b) *In actions ex contractu.*

472. A declaration on one contract cannot be made out by proof of another, however closely the two may have been connected: *Pennsylvania Mining Co. v. Brady*, 14 M. 260.

473. One cannot recover under a special count upon a promise which it does not count on: *Beecher v. Pettee*, 40 M. 181.

474. The breach of an express contract will not sustain an action on an implied *assumpsit*: *Thorp v. Bateman*, 37 M. 68.

475. One cannot recover as upon an implied contract where the facts show an express contract. But if, while relying upon an express agreement, he also claims that if that should not be shown the facts will imply an understanding and that he will rely on that, he may recover on whichever contract is made out: *Van Fleet v. Van Fleet*, 50 M. 1.

476. Where no special counts are needed in an action on a contract, in which both special and common counts are used, the objection that the contract as proved differs from that set forth in the special count is unimportant. Even if the contract were void recovery might be had upon the common counts: *Fulmer v. Rice*, 52 M. 435.

477. A declaration on the common counts will not support a claim to recover for six months' services at \$125, upon evidence of an express agreement for two years' employment at \$1,500 a year, if satisfactory to the employer: *Kalamazoo Novelty Manuf. Co. v. Macalister*, 40 M. 84.

478. A declaration based upon an assignment of *choses in action* alleged to have been made by certain specified persons as co-owners does not support a claim of title based on a finding that the assignment was made by one of them in the name of a firm composed of both, after the other had withdrawn from the partnership: *Seeley v. Albrecht*, 41 M. 525.

479. In an action upon a special agreement against two persons plaintiff cannot recover unless he avers and proves a joint undertaking; and in such action evidence of an original contract, signed by one of the defendants, together with an agreement signed by the other to "become security for the performance of the foregoing contract," although alleged to have been simultaneously executed,

was held inadmissible to prove a joint contract: *Lee v. Bolles*, 20 M. 46.

480. An action of *assumpsit* against parties jointly fails if there is no evidence of a joint liability or undertaking on their part: *Thompson v. Richards*, 14 M. 172; *Mace v. Page*, 33 M. 88.

481. A joint action, brought on a several obligation, sustains a verdict for the defendants as not jointly liable: *Larkin v. Butterfield*, 29 M. 254.

482. A joint action on an official bond fails if it appears that any one of the defendants is not liable: *Detroit v. Houghton*, 42 M. 459.

483. A declaration setting up a joint obligation will not sustain recovery unless a joint debt is proved, and failure to prove the claim as against one defendant is as fatal as not to prove it against any: *Munn v. Haynes*, 46 M. 140.

484. Where suit is brought on a joint obligation there can be no recovery on any other basis, nor for any period during which the joint arrangement was not in force: *Smith v. Detroit, H. & S. R. Co.*, 56 M. 529.

485. An action for a separate liability against a single defendant precludes evidence that he was liable as principal debtor jointly with another: *Ingersoll v. Baker*, 41 M. 48.

486. Where a declaration counts upon a single contract, and the evidence shows that there were two, and there is nothing to show that one superseded the other, or that they were merged in one, there is a substantial variance, especially if they differed in their terms: *Martin v. Boyce*, 49 M. 122.

487. Suit was brought on what purported to be a joint contract signed on one side by representatives of two railroad companies. It did not appear that the companies had any joint interests or that their representatives had authority to bind them jointly by any such obligation. It seems that testimony of preliminary oral agreements was admissible, though inconsistent with the written contract, as bearing on the power to make it. So also, if no limitation of time was fixed and nothing to show that either party could not terminate the contract, would evidence be admissible of a subsequent understanding and course of business making the obligation separate instead of joint: *Smith v. Detroit, H. & S. R. Co.*, 56 M. 529.

488. A corporate obligation will not sustain an action against an individual: *Hart v. Brockway*, 57 M. 189.

489. Where the evidence in support of a claim based on a contract discloses a condition which does not appear in the claim as stated,

and the fulfilment of which is prerequisite to payment, and there is no evidence that it has been fulfilled, there is a radical variance and the claim is properly rejected: *Kroll v. Ten Eyck's Estate*, 48 M. 230.

490. It is not a fatal variance between a declaration and the proofs that the declaration avers that the plaintiff performed a continuous contract for a long space of time, to wit, five years, and the evidence shows he performed for three years only: *Barton v. Gray*, 48 M. 164.

491. Under a declaration for breach of promise averring a promise to marry plaintiff (1) on request; (2) within a reasonable time; and (3) generally, *held*, that evidence was admissible to prove a promise to marry when certain buggies were finished: *Bennett v. Beam*, 42 M. 346.

492. A declaration upon a promise to pay presently is consistent with the defendant's having been at liberty to take a year's time or more on giving his note if he did not do so: *Allen v. Duffie*, 43 M. 1.

493. Where the consideration for a promise is stated as consisting of two parts, each of which is material and pertinent, proof of but one is a variance fatal to plaintiff's recovery, notwithstanding either would have been sufficient by itself to sustain the promise if alleged as the sole consideration: *Tillman v. Fuller*, 18 M. 113.

494. In an action on a warranty of a span of horses the declaration stated the consideration to be a yoke of oxen and a note for twenty dollars, and on the trial it appeared the note was for ten dollars only. The variance was *held* to be fatal: *Harrington v. Worden*, 1 M. 487.

495. Declaration against one who had subscribed with others for the erection of a college building at Hillsdale, for the use of the Michigan Central College incorporated at Spring Arbor. The declaration averred that this college decided not to use the building when completed, and the subscribers afterwards renewed their subscriptions, and indebtedness was incurred and the building completed in reliance thereon. It was shown in evidence that the renewal of the subscriptions and the erection of the buildings were for the benefit of a new college to be established at Hillsdale. This fact not being averred in the declaration, which only showed a subscription for a college not located at Hillsdale, it was *held* that no recovery could be had thereon: *Underwood v. Waldron*, 12 M. 73.

496. Goods were shipped with instructions

to the consignees to sell on their judgment of the market, unless otherwise advised, but some time afterwards they were ordered to sell immediately. They did not do so, and the shippers sued for damages resulting from delay, and in the declaration averred shipment, delivery and orders to sell immediately as of the day and year aforesaid. *Held*, that the variance as to the time of the order was not material: *Howland v. Davis*, 40 M. 545.

497. Where the plaintiff in *assumpsit* relies upon the liability of the defendant which the law implies from facts and circumstances, it is just as essential to a recovery to prove all the facts and circumstances which create the liability alleged in the declaration as it is where a special contract is declared on to prove the contract as alleged: *Michigan Southern & N. I. R. Co. v. McDonough*, 21 M. 165.

498. So, if plaintiff in *assumpsit* counts upon the common-law liability of common carriers to carry safely, he must prove all the circumstances necessary to create the liability; and if he fail to show that the property was delivered to, and accepted by, the company under circumstances which made it their duty to assume the care and custody of the property in its reception, transportation and delivery, he fails to prove the contract alleged: *Ibid*.

499. Under a declaration of two counts, one upon a promise to move a barn and sheds thereto attached and put the barn in good repair, and the other upon a promise to move the barn and sheds in as good repair as they then were, the inquiry as to how much it would cost to move the sheds and put them in repair is not admissible against objection in the absence of any allegation of a promise to move both barn and sheds and put them both in repair: *Detroit, H. & I. R. Co. v. Forbes*, 30 M. 165.

500. Under an allegation stating the consideration of a promise sued upon to be an agreement by the plaintiff to convey to the defendants the right of way for their railroad track, *held*, that proof of a conveyance of a fee of the land as performance of this agreement is not objectionable as a variance; proof of performance of more than the consideration, so long as it includes the agreed consideration, is not open to complaint on the part of the defendant: *Ibid*.

501. A man bringing suit in his own name put in evidence a contract under which he and his wife were to work for defendant. *Held*, that there was no material variance: *Harrington v. Gies*, 45 M. 374.

502. Where by a contract inspection of lumber was to be made by a person named, held competent to show that by consent of parties the inspection was made by another. This did not constitute such a change in the contract as required to be set forth in the declaration: *Savercool v. Farwell*, 17 M. 308.

503. A charge for money lent, in a bill of particulars, will not warrant evidence of the loan of a United States bond, but only of coin, bank-bills or some well known circulating medium popularly designated as money: *Waterman v. Waterman*, 34 M. 490.

504. A declaration charging a defendant with receiving lumber as plaintiff's agent to sell, and with collecting and not paying over the proceeds, cannot be supported by proof of a sale of the lumber to defendant, and the partial non-payment of the price by him as original purchaser: *Peppler v. Ratz*, 38 M. 96.

505. Where the bill of particulars in an action for the price of merchandise relies on an actual sale for a specific sum and contains nothing which would justify recovery on a *quantum valebat* for its conversion, there is no ground of action against defendants for the unauthorized taking of goods belonging to plaintiff but taken away and shipped in defendant's name and with his privity: *Campbell v. Sherman*, 49 M. 534.

506. The variance is fatal between an averment of an undertaking to become co-signer of a note and pay it at maturity, and proof of nothing more than an agreement to provide for the note at an indefinite time out of a future loan to be secured by mortgage given by the party for whose benefit defendant was to advance the money borrowed on the note; there is a serious difference between an agreement to pay a note when due, and one to provide for it in a specific way or out of a certain fund at a definite or indefinite time in the future: *Potter v. Brown*, 35 M. 274.

507. The introduction of a note in evidence under the common counts without objection will not preclude raising the objection that it varies from a special count: *Freeman v. Ellison*, 37 M. 459.

508. "Trobridge" for "Trowbridge" is not a material variance in naming a defendant in a declaration on a promissory note: *Buhl v. Trowbridge*, 42 M. 44.

509. Where a variance between the declaration and the proof as to the middle initial of the maker of a draft could not have prejudiced any one, it will not be noticed: *McDonough v. Heyman*, 38 M. 334.

510. One cannot recover under a declaration in which he claims as indorsee of a note

bearing ten per cent. interest, if the interest clause in the note sued on is invalid, for the note sued on would be different from the one indorsed to him: *Nelson v. Dutton*, 51 M. 416.

511. Where the declaration treats the paper sued upon as a promissory note, but it is shown not to be such, the variance is fatal where the declaration is not adapted to the case of any other special contract: *Mattison v. Marks*, 31 M. 421.

512. Where a bill of particulars gives the dates of charges, a due-bill of a later date and for a less amount than the aggregate of items should not be rejected for variance if it tends to prove an indebtedness existing at its date: *Collins v. Beecher*, 45 M. 436.

513. In an action by Isaac N. Gage upon a guaranty of collection by one Reed of certain promissory notes made by one Cole, it was held competent to admit in evidence the proceedings and judgment against Cole to enforce collection of the notes, though those proceedings were taken in the name of Newton Gage as plaintiff, where it is shown that plaintiff's name is Isaac Newton Gage, and that he is the same person named as Newton Gage in the proceedings against Cole: *Reed v. Gage*, 38 M. 179.

514. Where a declaration upon a guaranty of collection is framed on the basis of a diligent and unsuccessful prosecution of all the principal debtors to judgment and execution, the record of an action against such principal debtors, which, as to two of them, shows no more than the institution of a suit which was afterward stayed, is insufficient to establish a right of recovery: *Aldrich v. Chubb*, 35 M. 350.

515. Where the first two counts of a declaration allege guaranty of payment of a note, etc., and the third count is a common count in *assumpsit*, with copy of the note annexed, and an alleged indorsement on the back by defendant without guaranty over it, refusal to exclude the note under the third count as variance between declaration and proof is unimportant, as it was admissible under the other counts: *Roberts v. Hawkins*, 70 M. 566 (June 8, '88).

516. An allegation that defendants acknowledged themselves held and firmly bound unto "the board of supervisors of the county of St. Joseph" is not sustained by a bond to "the supervisors of the county of St. Joseph," the declaration not alleging that the bond was made to the plaintiffs by the name mentioned in the bond: *St. Joseph Supervisors v. Coffenburg*, 1 M. 355.

517. A declaration on a sealed bond will

not permit evidence of one without seal, and an amendment would be necessary to avoid the effect of the variance: *McCormick v. Bay City*, 23 M. 457.

518. Where a bequest was "to the corporation of the village of A., and the order of the probate court giving permission to sue on the executor's bond, for its non-payment, was "to the common council of the village of A.," and the declaration on the bond was "for the use and benefit of the village of A.," it was held that there was no variance that would prevent the admission of the order in evidence. The common council of the village is, for the purpose of the suit, identical with the village or the corporation of the village: *Hatheway v. Sackett*, 32 M. 97.

As to variance in actions on insurance policies, see INSURANCE, §§ 306, 307.

Variance in actions for breach of covenant, see COVENANT, §§ 11, 12, 16, 17.

(c) *In actions ex delicto.*

519. Under a declaration in case against a company for violating the duties of a common carrier in its transportation of live-stock, and charging the company as a common carrier only, proof is essential that the company has the character of a common carrier of such stock: *Lake Shore & M. S. R. Co. v. Perkins*, 25 M. 329.

520. In an action for enticing away his wife, plaintiff cannot show defendant's acts of adultery with her, not having complained of such in his declaration: *Perry v. Lovejoy*, 49 M. 529.

521. In an action by a tenant against his landlord for interference with the former's possession, a count which rests the whole ground of complaint on a continuous right of possession as lessee, and enumerates various acts inconsistent therewith, calls for a showing of such a continuous leasehold right as alleged, as such right is material; the absence of such showing is fatal, and excludes from the case everything that depends on the count: *Ives v. Williams*, 53 M. 636.

522. A declaration averring damages from an obstruction to the natural flow of a stream will not support a claim for damages arising from so building an authorized dam as to exceed the authority and make the obstruction greater than it should have been. The injury complained of should have been averred as arising from the excess or insufficiency of the dam: *Wood v. Rice*, 24 M. 423.

523. Damages as for positive malfeasance charged in the declaration cannot be recovered

upon evidence of non-feasance only; and defendant is not required to meet such a showing: *Macumber v. White River Log, etc. Co.*, 52 M. 195.

524. Under a declaration charging a boom company with damming up water by gates, booms, timber, chains, ropes, piers, poles, logs and other appliances, and thereby flooding plaintiff's land, evidence cannot be given of the company's failure to perform with diligence its duty to float the logs cast into the river by others, and to run them properly so as to prevent injury to plaintiff's land by back-water: *Ibid*.

525. There is no material variance between an allegation of the obstruction of a highway in a specified township and proof that a street in a certain village was obstructed, if it appears that the village was in the township: *Patterson v. Detroit, L. & N. R. Co.*, 56 M. 178.

526. The appropriation of plaintiff's land in the bed of a stream to support the pier of a bridge is not an injury for which recovery can be had under a declaration complaining of the bridge only as a hindrance to the profitable use of plaintiff's dock and warehouse: *Maxwell v. Bay City Bridge Co.*, 41 M. 454.

527. Under a count for fraud against the plaintiff alone in a sale made by his agent, it is error to allow a recovery for the interest of the plaintiff's brother, from whom plaintiff has simply an assignment of the proceeds of sales by such agent: *Weeks v. Downing*, 30 M. 4.

528. Where a declaration for obtaining money on false pretences is so amended as to describe the fraudulent representations differently, and add to them, as by differently stating localities and amounts of payments made by the plaintiffs, the variance is material: *Fish v. Barbour*, 43 M. 19.

529. Under a count for a false and fraudulent representation of the value of an article sold by defendant, plaintiff may prove false statements made by defendant at the time, as to the value of particular parts of the article, notwithstanding such statements are not detailed in the declaration: *Picard v. McCormick*, 11 M. 68.

530. A declaration in case charging defendant with having procured plaintiff to sell and deliver goods to him by making false representations as to his own credit is not supported by evidence that defendant, by making false representations of solvency and prompt payment, had obtained an extension of time on a debt already matured: *Jones v. Kemp*, 49 M. 9.

531. In an action brought by a purchaser for fraudulent representations by the vendor, proof that the consideration for the sale was paid for the goods and the good-will of the business is fatally variant from a declaration which only states that it was for the goods: *Collins v. Jackson*, 54 M. 186.

532. In an action for damages resulting to the purchaser of a stock of goods from the fraudulent representations of the vendor, evidence that the purchaser in settling his affairs had been compelled to dispose of his wife's house and lot is inadmissible, if not counted on in the declaration, and if the fraud complained of was not the proximate cause of the loss of the house and lot: *Ibid*.

533. Under a declaration alleging that land sold to plaintiff was represented by defendant to be of a certain value, representations that it was of that value for farming may be shown: *Holcomb v. Noble*, 69 M. 396 (April 20, '89).

534. Under a declaration charging in one count that defendant has defrauded plaintiff of a horse, and in another that he has wrongfully converted it, testimony of fraudulent purchase and conversion is available for both counts: *Dayton v. Monroe*, 47 M. 193.

535. Where a surviving partner declares in tort upon a false warranty to his firm, and proves a cause of action that did not arise until after the firm was dissolved by his copartner's death, the variance is fatal: *Mead v. Raymond*, 53 M. 14.

536. A declaration in an action against a street railway company for an injury resulting from its neglect to properly clean the snow from its tracks, in consequence of which a horse harnessed to a double bobsled was thrown down, described the ridges of snow as "along and very near to said street railway track, and between the double tracks thereof," and stated that as the sleigh struck the ridge between the tracks the horse stopped on the steep and slippery bank piled "along and near said" track. *Held*, that this distinguished between the two places; and as a like distinction was kept up in further recitals, there was no variance arising out of the question whether it was one ridge or the other that caused the injury: *Wallace v. Detroit City R. Co.*, 58 M. 231.

537. A declaration for negligent injury to a brakeman while uncoupling cars set forth that it was occasioned by a deep hole between the rails. The evidence was that it was between the rails of a side track. *Held*, that the declaration would naturally be construed to refer to the main track, and that the variance

was material, especially when taken in connection with other variances as to the nature of the hole and the extent of the injury: *Batterson v. Chicago & G. T. R. Co.*, 49 M. 184.

538. A declaration for causing the death of plaintiff's intestate alleged that the planks in the bridge where the accident occurred were loose, and the stringers uneven, so that the planks were liable to slip off and turn over, and thereby to trip horses, and that decedent's horses became entangled in the loose planks and thereby tripped. The evidence showed that there was a broken plank and a hole in consequence thereof, and that one of the horses driven by decedent had stepped into the hole, whereby the team became frightened, resulting in the injury complained of. *Held* no variance: *Merkle v. Bennington*, 68 M. 183.

539. Where a declaration claimed damages against a railroad company for the killing, through its neglect to repair its fences, of one cow and one sow, and the proofs showed that the animals killed were a cow and a shoat or pig about three months old, *held*, that there was no variance: *Jebb v. Chicago & G. T. R. Co.*, 67 M. 160.

540. A declaration for a negligent injury caused by the caving-in of the surface over a mine will cover a case in which the caving-in was due in part to the insufficiency of lateral supports, and need not be confined to one in which the surface fell in because of the removal of that on which it rested: *James v. Emmet Mining Co.*, 55 M. 335.

541. In an action for injuries caused by a defect in a bridge, when the declaration states that plaintiff's horse, while alarmed at a hole in the bridge, backed against the railing, which giving way the vehicle and its contents were precipitated below, it is immaterial to the recovery whether the proof shows that plaintiff was precipitated from the bridge itself or from the embankment adjoining the bridge: *Smith v. Sherwood*, 62 M. 159.

542. In an action for an injury caused by defendant's negligence in setting plaintiff, a boy thirteen years old, at work upon a dangerous machine without proper appliances, evidence that working at the machine made the boy dizzy is not admissible, no such complaint being set forth in the declaration, and it not being suggested that such effect upon plaintiff led in any way to the accident: *Steiler v. Hart*, 65 M. 644.

543. Under a general allegation of injury caused by defendant's negligence, plaintiff can introduce proof of injury in his special calling

or occupation: *Joslin v. Grand Rapids Ice Co.*, 50 M. 516.

544. In an action for the negligent destruction of plaintiff's buildings by fires lighted by defendant or not properly cared for by him, the plaintiff can give evidence of the presence of combustible material upon defendant's premises even though the fact is not counted on in the declaration: *Lucas v. Wattles*, 49 M. 380.

545. In case for a boom company's negligence causing damage to plaintiff's land, described in the declaration as lot one, a deed to a part of lot one is admissible in evidence. Plaintiff may prove that he owns a part of the premises described, and if his recovery is confined to the damages to that part to which he proves title, defendant is not prejudiced: *Anderson v. Thunder Bay River Boom Co.*, 61 M. 489.

546. A declaration as for injury to plaintiff in being wrongfully put off the train at a place remote from the railway station will not support a recovery where the proof shows that the injuries suffered, which were very great, were mainly due to the passenger's being carried by but finally landed near the station so late that the carriage which had called for him had gone again, the driver supposing that he had not come, and when all places of shelter were closed, and all conveyances gone, it being after midnight, so that he was obliged, while suffering from fever, to walk home three-quarters of a mile in a freezing rain: *Harding v. Chicago & G. T. R. Co.*, 56 M. 628.

547. In an action for assault and battery the plaintiff averred that by reason of the battery he was greatly hindered and prevented from doing and performing his work and business and looking after and attending his necessary affairs and avocations. Held, that this allegation did not justify the reception of evidence that plaintiff, being a farmer, and having hay ungathered at the time of the injury, was troubled in getting help to save it, and in consequence was seriously injured: *Heiser v. Loomis*, 47 M. 16.

548. Under a declaration in trespass, counting upon an injury as done March 1, 1886, evidence that it was done March 2, 1886, is competent: *Conlon v. McGraw*, 66 M. 194 (June 9, '87).

549. Where replevin was brought for the unlawful detention of property at Hampton, in Saginaw county, and defendants justified under attachments issued out of the circuit court for that county, held, that plaintiffs were not estopped by this issue from showing that the taking of the property under the at-

tachments was at Hampton, in Bay county: *Craig v. Grant*, 6 M. 447.

550. In replevin for impounded cattle defendant gave notice that he would show they were running at large on the highway. On the trial he offered to show that they were part of a large herd that were on and off the highway at pleasure, and with only a thirteen-year-old boy to look after them, but he declined to assume the burden of showing that these particular cattle were actually in the highway themselves. Held proper to exclude the evidence offered and to order a verdict for plaintiff: *Blanc v. Hirth*, 56 M. 330.

As to variance in actions for libel or slander, see LIBEL, §§ 105-111; SLANDER, §§ 80-83, 66, 67.

(d) When disregarded or deemed waived.

551. A variance between the declaration and the proof should be disregarded at the trial, when the instrument is otherwise sufficiently described in the declaration, so that defendant cannot be surprised or misled by the evidence: *Lothrop v. Southworth*, 5 M. 436.

552. A variance in the description of a written instrument in the pleadings will be disregarded where the party could not have been misled, and has allowed the instrument to be received in evidence without objection: *Rorubacher v. Lee*, 16 M. 169.

553. Objection to variance between evidence and the pleading under which it is offered must be held to be waived where the evidence is received and submitted to the consideration of the jury without the objection being taken: *MHardy v. Wadsworth*, 8 M. 349.

554. Where all the evidence relating to a transaction has been given by the parties to the suit themselves, and there is a variance between the plaintiff's declaration and his proofs, by which the defendant is neither misled nor injured, and to which he raises no objection till the case has been summed up, and then for the first time requests a charge upon it, the objection will not be sustained. The case is within the statute of amendments (H. S. § 7635): *Stone v. Covell*, 29 M. 359.

555. The objection that the declaration does not admit proof of certain facts comes too late after such proof has been admitted: *McCoy v. Brennan*, 61 M. 362.

556. Where testimony is introduced, and the party relying upon variance makes no objection on that ground until his request to charge, and then brings it to the court's atten-

tion for the first time, the objection must be deemed waived: *Merkle v. Bennington*, 68 M. 183.

557. A declaration on a contract averred performance for five years and defendant's refusal at the end of that time to permit further work. The proofs showed performance for three years and then a postponement at defendant's request, after which defendant discharged the plaintiff. *Held*, that the question of variance could not be raised for the first time after all the evidence had been submitted and the jury instructed on the basis of it: *Barton v. Gray*, 57 M. 622.

558. Where evidence is objected to solely for a formal variance from the bill of particulars, it is better to permit an amendment of the bill than reject the evidence, unless there is reason to believe defendant will be prejudiced: *Collins v. Beecher*, 45 M. 436.

559. The objection of variance must be raised in the trial court: *Stanton v. Hart*, 27 M. 539; *Detroit, H. & I. R. Co. v. Forbes*, 30 M. 165; *Slater v. Chapman*, 67 M. 523 (Nov. 10, '87).

VIII. AMENDMENTS.

As to amendments in justices' courts, see JUSTICES OF THE PEACE, III, (d), 5.

As to amendments on appeals from justices' courts, see APPEAL, §§ 509-517.

As to amendments in chancery, see EQUITY, V, (j).

(a) *In general.*

560. No amendment should be permitted the effect of which would be to destroy or diminish the rights of third persons who are interested in the result of the issue: *Moore v. Graham*, 58 M. 25.

561. Where a party seeks to amend his pleadings upon a given point, and his affidavit shows that the plea would not accord with the facts, his motion must be denied: *People v. Sackett*, 14 M. 320.

562. Where a plaintiff suffers the time to elapse within which, by the rules, he may amend of course, the right becomes extinguished. *Held*, therefore, that after a trial of the issue, verdict for the plaintiff, verdict set aside, a new trial granted, leave given to the parties, by special order of the court, "to file new pleadings under the general rules," an amended declaration filed under this order, and demurrer thereto, the plaintiff had no right to file a second amended declaration without special leave granted by the court: *People v. Washtenaw Circuit Judges*, 1 D. 434.

563. While just and reasonable terms may be imposed as a condition precedent to the granting of an amendment, yet the judicial discretion cannot be exercised to impose conditions upon litigants by way of punishment, or because the party or his attorney should have proceeded in some other way at the outset of his case or in making his defence: *Beecher v. Wayne Circuit Judges*, 70 M. 863 (May 18, '88).

564. And where the circuit judge had ordered defendant in an action of libel, as a condition of amending his plea of the general issue with notice of claim of privilege by adding a notice of justification, to pay \$1,000 as costs of motion, and to allow plaintiff to amend the *ad damnum* clause of his declaration so as to claim larger damages, such conditions were *held* unreasonable and an abuse of discretion, notwithstanding there had already been great expense and several months' delay in the case; and a *mandamus* was issued directing the successor of the judge to hear the motion to amend on its merits and to set aside the order: *Ibid*.

565. Under an order allowing a declaration to be amended the amendment must be actually made, and cannot be presumed, unless the record furnishes the data for applying the order so as to show what the precise effect of the amendment will be: *Ballou v. Hill*, 23 M. 60.

566. The neglect of a formal amendment of the declaration so as to show a discontinuance for which leave was given by the court is unimportant: *Cook v. Perry*, 43 M. 623.

567. In an action for breach of a written warranty of title to chattels sold it appeared that the warranty was given after the sale and dated back, and evidence was also given of an oral warranty. *Held*, that an amendment of the declaration to allege an oral warranty made at the time of sale materially changed the issue, and entitled defendant to a continuance, if he desired, with costs for the term: *Jennings v. Sheldon*, 53 M. 431.

568. Where, at the opening of a trial in the circuit, an amendment had been allowed as to a matter in the declaration that could not have misled defendant, it was *held* proper to refuse time to plead as if to an original declaration: *Detroit, H. & I. R. Co. v. Forbes*, 30 M. 165.

(b) *Of the declaration.*

As to amendment of declaration in EJECTMENT, see that title, §§ 107-111.

569. Where all the facts have been examined, and there is no reason to suppose de-

fendant has been misled concerning the issue, great liberality is exercised in allowing amendments to the declaration: *Miner v. O'Harrow*, 60 M. 91.

570. An averment in a declaration can be amended even after verdict, where it is mere matter of surplusage: *Monaghan v. Agricultural F. Ins. Co.*, 53 M. 238.

571. A declaration may be amended by adding new counts, so as to lay the contract or wrong in a different manner; but a new cause of action cannot be introduced by amendment: *People v. Washtenaw Circuit Judges*, 1 D. 434.

572. The circuit court has no power to allow a declaration to be so amended as to change the form of action; e. g., from trover to *assumpsit*: *People v. Wayne Circuit Judge*, 13 M. 206.

573. Counts in debt to recover the penalty for usury, under the statute, could not be amended by substituting counts for money had and received: *People v. Washtenaw Circuit Judges*, 1 D. 434.

574. A declaration upon the common counts cannot be so amended as to set forth a new and distinct cause of action upon a special contract which has become barred by the statute of limitations since the original declaration was filed; this would be to permit the fiction of relation to nullify an act of the legislature: *Gorman v. Newaygo Circuit Judge*, 27 M. 138.

575. Where a declaration upon the common counts in *assumpsit* is so amended as to be a declaration upon a special contract and to show only a distinct cause of action from that set forth in the original declaration, and one that could not by any evidence be brought within the common counts, the new declaration is for a new and separate cause of action. The fact that with their plea to the original declaration the defence set up notice of this special contract does not tend to show that the cause of action was the same in both declarations, or that the amendment should have been allowed, but the contrary: *Ibid.*

576. A declaration charging a railroad company as common carrier, for loss of goods shipped over its line and destroyed by fire while in its depot awaiting delivery to a subsequent carrier, cannot be amended, after the cause of action has become barred by the statute of limitations, so as to charge the company for negligence as warehousemen: *M. C. R. Co. v. Kalamazoo Circuit Judge*, 35 M. 227.

577. An amendment to a declaration for false imprisonment by adding a count for malicious prosecution can be allowed any time

before the right of action is barred by the statute of limitations, such new count being for the same cause of action as that originally set up: *Long v. Wayne Circuit Judge*, 27 M. 164.

578. A declaration on the bond of a residuary legatee alleging the failure to pay a claim is amendable by adding a count alleging the failure to pay a note which constituted the claim, even though the note itself was outlawed; no new cause of action is added by such an amendment: *Abbott v. Wayne Circuit Judge*, 55 M. 410.

579. An issue joined in an action of trespass for obstructing a highway upon the southwest quarter of a section presents a different issue from a claim for trespass for obstructing a highway on the southeast quarter of the section; and the proceedings being penal in their nature, and the statute providing that the case shall be tried on appeal on the issues joined in the justice's court, an amendment cannot be permitted in the circuit court: *Graham v. Langston*, 65 M. 45.

580. A declaration on the common counts can be amended on a new trial by the insertion of special counts: *Chapman v. Colby*, 47 M. 46.

581. Where a declaration for fraudulently procuring plaintiff to loan money on worthless land combined in one count three related transactions, claiming a gross sum as damages, it was held proper but not necessary to add three counts in which the three transactions were stated separately and separate damages claimed for each. They did not add any new cause of action: *Stubly v. Beachboard*, 68 M. 401.

582. The statute of amendments does not permit substantial defects of description to be aided: *Benalleck v. People*, 31 M. 200.

583. Where, at the opening of trial in the circuit, it was objected to a declaration that it disclosed no cause of action, it was held that the allowance of an amendment by changing the statement of the consideration for the alleged promise on which the action was based, so that it would read that plaintiff "would convey" instead of "had conveyed," could not mislead or surprise the defendant, and was not error: *Detroit, H. & I. R. Co. v. Forbes*, 30 M. 165.

584. Where all the evidence in a case disclosed only one contract, the subsequent allowance of an amendment to the declaration thereon, merely to avoid a variance as to some circumstances connected with the cause of action, and when it cannot defeat the purposes of justice or operate as a real hardship or sur-

prise upon the defendant, is within the discretion of the court: *Ibid*.

585. In an action against a railroad company for damages caused by its neglect to fence its road where it crossed the plaintiff's land, the want of venue in the declaration was held cured by H. S. § 7635, subd. 11, where the injury complained of was located territorially upon land in the county where the suit was brought. Trials by the court stand in the same equity as trials by jury in this regard: *Grand Rapids & I. R. Co. v. Southwick*, 30 M. 444.

586. In an action on the common counts to recover the price of articles sold and delivered by plaintiff's assignor, an amendment to cure the want of an averment of an assignment is matter of course: *Kelly v. Waters*, 31 M. 404.

587. Where in an action for negligent injury both sides have without objection introduced such testimony as fully explains all facts bearing on the manner and cause of the injury, an amendment of the declaration should be allowed as a matter of course, if objected to for variance, so long as it is plain that no one could have been surprised by the testimony: *Wallace v. Detroit City Ry Co.*, 58 M. 231.

588. In a declaration for maliciously suing out an attachment the failure to allege the conclusion of the attachment suit is a formal defect merely, and plaintiff is entitled to an amendment even at the trial: *Sutton v. Van Akin*, 51 M. 463.

589. The court has power in a proper case to allow an amendment to correct the name of the plaintiff in the pleadings and proceedings which by mistake was erroneously given in the writ: *Final v. Backus*, 18 M. 218.

590. An amendment to a declaration on a promissory note so as to show the full name of defendant instead of the initial by which he had signed the note should be allowed at any time if there is no question of identity: *Webber v. Bolte*, 51 M. 113.

591. An amendment to a declaration whereby the plaintiff's name was changed from Dilks to Wilks was properly allowed on due showing, after personal service and default made absolute, and before judgment: *McLaughlin v. Wilks*, 42 M. 553.

592. Judgment in replevin was given by a justice in a suit brought against a defendant designated as D. T. Baldwin instead of David T. Baldwin, but no misnomer was pleaded, and the judgment was appealed by Baldwin under his full name after pleading to the merits. Held, that the informality, if any,

could be amended by reference to the records and was no longer material: *Baldwin v. Talbot*, 43 M. 11.

593. Garnishment proceedings cannot be amended by making the name of the principal defendant "Jonathan C. Davis" instead of "John C. Davis" where such amendment would injure an intervenor: *Moore v. Graham*, 58 M. 25.

594. The statute of amendments cures the defect, if any, of declaring in the name of the board of supervisors instead of in that of the county; and the court may make the necessary correction: *Johr v. St. Clair Supervisors*, 38 M. 532.

595. Misnaming the president and trustees of a village as the common council where they should sue in their name of office as highway commissioners may be cured by amendment: *Merrill v. Kalamazoo*, 35 M. 211.

596. Pleading in the name of a public office without adding the name of the officer, if a defect, is amendable: *Berrien County Treasurer v. Bunbury*, 45 M. 79.

597. A declaration in the name of a guardian was amended after plea by making the ward the plaintiff, suing by her next friend, who was the guardian aforesaid. The issue was in no way changed, however. Held, that the amendment was allowable; and it was not material that no opportunity was given to plead anew if leave was not asked or reason apparent therefor: *Morford v. Dieffenbacker*, 54 M. 593.

598. Striking out the name of a co-plaintiff is within H. S. § 7636, if it appears to be improperly in the declaration: *Hudson v. Feige*, 58 M. 148.

599. Where a declaration against a company named its president for the time being as defendant on its behalf (which would have been proper if it had been a joint-stock company, unincorporated and organized under a particular statute), it was held right to allow an amendment striking out his name and thus leaving the case to stand against the company by name as a corporation, service on the president having been proper under any of the statutes, and the object of the declaration being to enforce a company liability: *Kimball & A. Manuf. Co. v. Vroman*, 35 M. 310.

600. An action to collect a debt due a firm was brought in the name of three partners, one of whom, unknown to the attorneys, was dead. Held, that under H. S. § 7635, subd. 9, the process and pleadings could be amended so as to show a suit by the surviving partners: *Cragin v. Gardner*, 64 M. 399.

601. An amendment is not objectionable

for changing the date of a transaction so as to make it cover a longer time than was at first averred in the declaration, if it does not in any way change the obligation sued on: *Niemarck v. Schwartz*, 51 M. 466.

602. A declaration in an action for the amount of an order may be amended in the discretion of the trial court so as to admit testimony that the person giving the order acted as agent, and that it amounted to a novation of the indebtedness: *Finan v. Babcock*, 58 M. 301.

603. Whether a declaration on a joint award made under a joint submission can be amended so as to show the award to have been a sole obligation, *quere*: *Ballou v. Hill*, 23 M. 60.

604. The omission of the words "use of" in the common count for money paid to defendant's use is a mere clerical misprision that ought to be corrected on the trial: *Brown v. McHugh*, 35 M. 50.

605. A judgment for more than the *ad damnum* clause of the declaration cannot be supported by a subsequent amendment increasing the damages claimed. The plaintiff should have been allowed either to remit the excess or to make the amendment on condition that a new trial be had: *Kenyon v. Woodward*, 16 M. 326.

606. Where, during the argument to the jury, and without imposing any terms, an amendment to the *ad damnum* clause of a declaration was granted to cure a clerical error, and when it could not have prejudiced the defendant on the merits, this was a fair exercise of judicial discretion which would not be reviewed on error: *Borden v. Clark*, 26 M. 410.

607. Where the verdict is right the court may allow the *ad damnum* clause to be increased to cover it: *Cicotte v. Wayne*, 59 M. 509.

608. That a general *ad damnum* clause may by amendment be applied to a count before that which it immediately follows, see *Sheldon v. Sullivan*, 45 M. 324.

(c) Of other pleadings, etc.

609. It is within the discretion of the trial court to allow an amendment to be made to the notice of special defence attached to the plea of the general issue: *Browne v. Moore*, 32 M. 254.

610. In trespass for digging a ditch on plaintiff's land it is proper to allow defendants, after justifying as drain commissioner and contractors, to amend the notice attached

to their plea by stating that they dug under a license from the plaintiff: *Hopkins v. Briggs*, 41 M. 175.

611. Under the statute of amendments a notice of defence can be so amended as to make the pleadings conform to the referee's finding in the case; and such an amendment can bring in an item which the referee has disallowed and which would have been wiped out if there had been notice of ceroupmment: *Mason v. Peter*, 58 M. 554.

612. It is discretionary to refuse leave on the trial to defendant to amend his notice filed with his plea by adding that the due-bill sued on had been bought by plaintiff, an attorney, contrary to H. S. § 7185; and the refusal is certainly not an abuse of discretion where plaintiff admits that he does not claim to be a purchaser except subject to equities: *Randall v. Baird*, 66 M. 312.

613. Leave should not be granted on the trial to amend the notice of defence by adding a new issue which plaintiff cannot be expected to meet, where the application is not made on anything appearing on the trial and where no showing is made to support it: *Deline v. Michigan F. & M. Ins. Co.*, 70 M. 435.

That refusal of leave to amend so as to interpose the statute of limitations is not reviewable, see LIMITATION OF ACTIONS, §§ 205, 206.

614. A plaintiff may properly be allowed to amend his bill of particulars where the evidence does not tend to prove a demand set forth therein: *Cummin v. Wilcox*, 47 M. 501.

615. On a second trial the plaintiff's bill of particulars should not be allowed to be amended so as to add another credit of later date than the last debit item, thus avoiding the bar of the statute of limitations: *Hollywood v. Reed*, 57 M. 234.

616. Where an affidavit of merits is apparently made in good faith, but is wanting in some respects, the proper practice is to permit an amendment: *Wells v. Booth*, 35 M. 424.

IX. ADMISSIONS; WAIVERS.

(a) In general.

617. A plea of estoppel admits the cause of action, and if the estoppel fails judgment follows in due course against the defendant: *Whittemore v. Stephens*, 48 M. 573.

618. Where an action of trespass begun before a justice of the peace has been certified to the circuit under H. S. § 6895, because the plaintiff's evidence showed that a question of title to land was involved, the defendant's failure to give notice with his plea that title

would come in question does not, on the trial in the circuit, operate as an admission of plaintiff's title so as to exclude evidence of title in defendant; the case stands in the circuit subject to the same rules of proof and disproof as though it had been originally begun there: *Rawson v. Finlay*, 27 M. 268.

619. There can be no waiver that can make it proper to allow a case to be decided on issues not authorized by the pleadings: *Pennsylvania Mining Co. v. Brady*, 14 M. 260.

620. Objections to the sufficiency of the allegations in a plea of abatement should be raised by demurrer, and, if not made until after judgment, are too late to be considered: *Fisher v. Busch*, 64 M. 180.

(b) *What admitted by demurrer.*

621. A demurrer to special counts would not admit facts stated only in the consolidated common counts: *Rose v. Jackson*, 40 M. 80.

622. Inferences of the pleader are not admitted by demurrer: *Dubois v. Hutchinson*, 40 M. 262.

623. A demurrer admits only what is well pleaded: *United States v. Van Auken*, 96 U. S. 366.

624. A demurrer to a declaration alleging plaintiff's title to land admits such title: *Stout v. Keyes*, 2 D. 184.

625. A general demurrer admits jurisdiction of the person: *Thompson v. Michigan Mut. Ben. Assoc.*, 52 M. 522.

(c) *Admissions and waivers by pleading the general issue and going to trial.*

As to effect of failing to deny execution, see *supra*, VI, (b).

626. The plea of the general issue in forcible entry proceedings waives irregularity in summons and *venire*: *Falkner v. Beers*, 2 D. 117.

627. Pleading to the merits in replevin waives mere clerical defects in the affidavit: *Baker v. Dubois*, 32 M. 92.

As to waiver of jurisdictional defects and objections by pleading to the merits, see JURISDICTION, §§ 44-54, 56-59, 61-63, 68.

628. The plea of the general issue admits plaintiff's representative character as administrator or executor: *Vickery v. Beir*, 16 M. 50; *Bachelder v. Brown*, 47 M. 366.

629. But not where suit was not originally brought by him, but was revived in his favor, after general issue pleaded, upon suggestion of the original plaintiff's death: *Vickery v. Beir*, 16 M. 50.

630. If one who is individually sued pleads the general issue as administrator, he cannot deny the jurisdiction: *Singer Manuf. Co. v. Benjamin*, 55 M. 330.

631. The plea of the general issue only in an action brought by a domestic corporation is an admission of the plaintiff's corporate existence: *Smith v. Adrian*, 1 M. 495; *Wilson S. M. Co. v. Spears*, 50 M. 534.

632. In an action by a national bank organized in this state the plea of the general issue admits its corporate existence: *Garlon v. Union City Bank*, 34 M. 279.

633. The objection that a county should have sued in its own name upon its treasurer's bond, given to the board of supervisors, is waived if not pleaded in abatement: *Johr v. St. Clair Supervisors*, 38 M. 532.

634. By pleading the general issue a defendant sued in a corporate name admits that it is sued in the right name: *Lake Superior Building Co. v. Thompson*, 32 M. 293. See *supra*, § 168.

635. The plea of the general issue is not an admission of facts subsequently occurring: *Vickery v. Beir*, 16 M. 50.

636. Pleading the general issue in an action for slander admits the falsity of the words charged: *Fowler v. Gilbert*, 38 M. 292.

637. When a demurrer is overruled and the party pleads over, the right of objection is thereby waived, and he cannot afterwards object, on error, that it was erroneously overruled (*sed, quere*): *Wales v. Lyon*, 2 M. 276.

638. Pleading and going to trial precludes parties from setting up merely technical defects where the declaration contains a good case otherwise: *Grand Rapids & I. R. Co. v. Southwick*, 30 M. 444.

639. When, to a declaration alleging "a good and valuable consideration," defendant pleads the general issue, he thereby waives his right to a more specific allegation, and consents that evidence of the consideration may be introduced: *Kean v. Mitchell*, 13 M. 207.

640. Formal defects in the declaration should be taken advantage of by demurrer: *Hatheway v. Sackett*, 32 M. 97; *Aldrich v. Chubb*, 35 M. 350.

641. If a declaration alleges a substantial grievance any objections for mere inartificiality must be raised by demurrer: *Briggs v. Milburn*, 40 M. 512.

642. Mere clerical omissions in a declaration can be reached, if at all, only by demurrer: *Brown v. McHugh*, 35 M. 50.

643. Defects in a declaration are not noticed if, being amendable, they have not been demurred to: *Norton v. Colgrove*, 41 M. 544.

644. A declaration that sets forth facts intelligibly cannot be objected to in the supreme court for lack of technical accuracy if it has not been demurred to: *Burke v. Wilber*, 42 M. 327.

645. A party who has chosen not to demur, and has taken the chance of a trial of fact, cannot obtain a reversal upon an objection that is one of form rather than of substance: *Seiber v. Price*, 26 M. 518.

646. An objection to a declaration for not being full enough should be taken before going on with the trial: *Pettibone v. Maclem*, 45 M. 381.

647. Defendant waives formal defects in a declaration by putting in testimony: *Jenks v. Brown*, 38 M. 651.

648. Objections to the form of pleadings raised by way of objections to the admission of evidence are not favored: *Van Middlesworth v. Van Middlesworth*, 32 M. 183.

649. When issue has been joined on the facts without demurrer the declaration cannot be held fatally defective unless inconsistent with any reasonable ground of action: *Jackson v. Collins*, 39 M. 557.

650. Failure to demur concedes the sufficiency of the declaration unless the defects are such as cannot by any intentment be supplied or overlooked: *Wilcox v. Toledo & A. A. R. Co.*, 43 M. 534.

651. Objections to the sufficiency of a declaration should be raised early in the proceedings, so that parties may be saved the expense and delay of preparation for trial: *Gay v. Farmers' Mutual Ins. Co.*, 51 M. 246.

652. While the plea of the general issue waives technical and formal objections to the declaration, it does not waive the essential allegations of a cause of action: *Stoflet v. Marker*, 34 M. 313.

653. The objection that the declaration fails to state a cause of action may be raised by objecting to the introduction of any evidence: *Ibid.*

654. If a defendant proposes to object to the introduction of any evidence under the declaration on the ground that no right of action exists, and that if there were any the allegations of the declaration do not show him to be properly impleaded, he should demur to the declaration instead of pleading the general issue and then objecting, unless his objection goes to the whole merits of the case or cause of action, and is so clear that the declaration would not sustain a judgment even if the plaintiff should recover on the merits: *Rowland v. Kalamazoo Poor Superintendents*, 49 M. 553.

655. A declaration is not open to objection for defects after pleading to the merits unless the defects are fatal, and even then objection should be taken before the parties are put to the expense of preparing for trial: *Bauman v. Bean*, 57 M. 1.

656. If a declaration does not state a cause of action it should be demurred to, instead of waiting to object to the introduction of evidence under it: *Geveke v. Grand Rapids & I. R. Co.*, 57 M. 589.

657. Fatal objections to a declaration should be taken by demurrer. If the defendant delays to take them until the trial, all intentments should be against him, and if it is possible to sustain the case by amendments they should be permitted: *Barton v. Gray*, 48 M. 164.

658. A defendant who claims that a declaration is defective on its face, but omits to demur, and seeks to raise the question for the first time by a general objection on the trial to the admission of any evidence, will be held to strict rules and required to be very precise, at least where it is not made to appear that the real justice of the case has been overreached: *Jennison v. Haire*, 29 M. 207.

659. Formal defects in pleadings, even if not amendable, should be brought to the court's attention at the earliest reasonable opportunity, if the opposite party means to rely on them. And if the defect is one that would be cured by verdict, the trial judge should either disregard it or direct amendment to be made and the trial to proceed, and if this takes defendant by surprise he can continue the case on a proper showing: *Sutton v. Van Akin*, 51 M. 463.

X. AIDER BY VERDICT OR JUDGMENT.

660. A verdict on the merits cures a formal defect in a declaration: *Sutton v. Van Akin*, 51 M. 463.

661. Want of venue in the margin of a declaration which located the injury complained of upon land in the county where suit was brought held cured by H. S. § 7635 after trial by the court: *Grand Rapids & I. R. Co. v. Southwick*, 30 M. 444.

662. H. S. § 7635, subd. 8,—curing the omission of allegations of matter without proving which such verdict should not have been rendered,—was intended to adopt the common-law rule: *Kean v. Mitchell*, 18 M. 207; *Delashman v. Berry*, 21 M. 516.

663. If the pleadings put in issue a mere *nudum pactum*, no consideration can be presumed to have been proved, because none ap-

pears to have been claimed to exist; and a verdict will not cure the defect: *Ibid.*

664. A verdict cures a defective statement of a title or cause of action, but not the statement of a defective title or cause of action: *Lincoln v. Cambria Iron Co.*, 108 U. S. 412.

665. A fact necessary to be proved to justify a recovery, not averred in the declaration, if it be plainly inferable from any fact stated in, or by the case made by, the declaration, will, after verdict, be presumed to have been proved: *Delashman v. Berry*, 21 M. 516.

666. Where to infer a fact omitted to be alleged, but necessary to be proved, would be to go outside of the declaration and to depart from the theory of the action presented by it, the omission is not cured by verdict: *Ibid.*

667. A defective statement of the consideration cannot be taken advantage of on the trial of an issue of fact by objection to the admission of evidence to establish the plaintiff's case; and after verdict for the plaintiff the allegation will be sufficient to sustain it: *Kean v. Mitchell*, 13 M. 207.

668. A defective allegation of consideration will be cured by verdict when, from the issue as actually made, it can fairly be presumed that the evidence necessary to establish a case was given under it: *Ibid.*

669. A statement of a consideration in a declaration in *assumpsit*, so defective as to be demurrable, will nevertheless be held good after verdict if the consideration referred to can possibly be valid: *Dickinson v. Dustin*, 21 M. 561.

670. An averment in a declaration in an action of debt upon a bond given on appeal from a judgment of a circuit court commissioner to the circuit court, in a proceeding to obtain restitution of premises under H. S. § 8807, that the defendant "did not forthwith pay the rent due or to become due," is not equivalent to an averment that any rent was actually due; and for that reason the declaration would be demurrable; yet it contains, nevertheless, such an argumentative statement that some rent was due, or was at least claimed to be due, that, after verdict, proof of this fact may be presumed, and the judgment entered thereon sustained: *Delashman v. Berry*, 21 M. 516.

671. But where, on such a declaration, the plaintiff's right to recover depends upon the fact that he has obtained restitution of the premises, an averment that the circuit court "adjudged that the said complainant in said suit have restitution of the premises," and the breach assigned being that the complainant had "obtained restitution of the same

as aforesaid," would not only be demurrable, but the defect would not be cured by a verdict; because the pleader does not base his right to recover upon the actual restitution of the premises — which was an essential fact in the condition of the bond — but upon his having obtained a judgment of restitution; thus claiming that the judgment itself constituted restitution. Upon such a theory there can be no inference of actual restitution; and a judgment founded upon it would be erroneous: *Ibid.*

672. The use in a declaration of the word "fraudulently," in reference to the course of the defendant, implies a *scienter*, and is an argumentative allegation of the defendant's knowledge, which, if not demurred to, is cured by the verdict: *Beebe v. Knapp*, 28 M. 53.

673. Where the action chosen is foreign to any right claimed, there is no necessity for a demurrer or plea in abatement; the court has no right to give a judgment for plaintiff: *Grand Rapids v. Whittlesey*, 33 M. 109.

674. The statute of amendments protects a judgment after verdict where, although an averment in the declaration was dropped by the abandonment of the counts containing it, both sides went fully into proofs relating to it, without objection, and it was apparent that the defence was not misled: *Barton v. Gray*, 57 M. 624.

675. Where not demurred to, a declaration for negligent injury must be held sufficient, after verdict, if it stated a cause of action though it did not specify the negligence, and especially if it counted upon other negligence which it did set forth. So held where a workman sued his employer for an injury suffered from the use of defective machinery and did not point out the defect, but also averred as negligence that he had been set at work that was outside the scope of his employment: *Broderick v. Detroit Union Depot Co.*, 56 M. 261.

676. A declaration in *assumpsit* on the common counts, which, after stating the several causes of action, omits to allege an express promise, though bad on special demurrer, is cured by judgment: *Hoard v. Little*, 7 M. 468.

677. Where a declaration contains in substance a cause of action, and the general issue is pleaded, the court will, after judgment, presume that all inaccuracies and defects in the plaintiff's statement of his cause of action were supplied by proof upon the trial: *Stange v. Clemens*, 17 M. 402.

678. Where a declaration based upon a promise, though framed on the theory that

the action should be one on the case, sufficiently sets forth the contract and the breach, and shows how plaintiff was damaged by being compelled to pay the demand himself under legal compulsion, it is *held* sufficient after judgment if the note to which the promise related was a joint and several one: *Potter v. Brown*, 35 M. 274.

679. A judgment on default is not affected by a defective statement in the declaration of the residence of parties, the defect being cured by H. S. § 7635, subd. 4: *Elliott v. Farwell*, 44 M. 186.

680. Where, to the whole of a declaration containing several counts, defendant pleaded *non assumpsit* and also not guilty, and the jury passed upon but one issue, it was *held* that either plea was good after verdict, and that, as the plea of *non assumpsit* met the whole declaration, the other plea might be stricken off, even after error brought: *The Milwaukee v. Hale*, 1 D. 306.

PLEDGE.

1. A pledge merely passes the possession, or at most a special property, to the pledgee, with a right of retainer until the debt is paid or the other engagement is fulfilled: *Tannahill v. Tuttle*, 3 M. 104.

Further as to pledge, see BAILMENT, IV.

POOR.

As to appointment and removal of superintendents of the poor, see OFFICERS, §§ 20, 21, 29-33.

1. In their statutory capacity as owners and managers of farm property superintendents of the poor are liable for injuries to adjoining owners from their negligent management: *Rowland v. Kalamazoo Poor Superintendents*, 49 M. 553.

2. Under H. S. § 1757, two of the three county superintendents of the poor possess the power of the board whenever they unite in action; it is within their power, without an authorization from the board at a formal meeting, to contract for the purchase of a mowing and reaping machine for use on the county farm: *Osborne v. Macomb Poor Superintendents*, 26 M. 66.

3. When application is made by a pauper to a county superintendent of the poor under C. L. 1857, § 1439 (see H. S. § 1762), the superintendent has full power to provide such temporary relief as he may deem proper, without any of the restrictions or qualifications imposed upon directors of the poor on similar

applications by §§ 1443 and 1444. And in granting temporary relief, and in determining who are proper subjects for temporary and permanent relief, a single member possesses the whole power of the board: *Hewitt v. Macomb Poor Superintendents*, 5 M. 166.

4. Township directors of the poor cannot incur liability on behalf of their townships by employing physicians to perform surgical operations upon paupers: *Barber v. Saginaw*, 34 M. 52.

See CITIES AND VILLAGES, § 111.

5. An affidavit to recover a penalty for bringing a pauper from another state into a county in this state, with intent to make such pauper a charge to said county, must, to give the court jurisdiction, state the facts positively or give the circumstances upon which affiant has good reasons to believe they exist: *Luton v. Palmer*, 70 M. 152.

6. A father may be compelled to support his adult children if they become a public charge: *Stilson v. Gibbs*, 53 M. 280.

7. But to make their father so liable adult children must be "poor persons" within the meaning of H. S. § 1741: *Clinton v. Laning*, 61 M. 355.

8. The proceeding, under H. S. ch. 41, to compel the support of poor persons by their relatives, are summary in character, and are not according to the course of the common law: *Smith v. Lapeer Poor Superintendents*, 34 M. 58.

9. And the order, under H. S. § 1743, in such proceedings is not a judgment, and cannot be reviewed on writ of error. It is to be enforced by attachment: *Ibid*.

10. The notice required by H. S. § 1742 to be given to the relatives of an insane child is essential to give the circuit court jurisdiction of proceedings by superintendents of the poor to charge such relatives with his support: *North v. Joslin*, 59 M. 624.

11. A petition for discharge as an insolvent which only professes to set forth in the schedule such property as is not exempt from execution, and the affidavit verifying which omits the clause required by the statute to be contained therein, "that I have in no instance created or acknowledged a debt for a greater sum than I honestly owed," is so defective as to give the officer to whom it is presented no jurisdiction: *Young v. Stephens*, 9 M. 500.

POWERS.

1. Where several persons are empowered by law to execute a public trust or power, and, in the execution thereof, all are present to de-

liberate, the act of a majority will be valid: *Scott v. Detroit Young Men's Society*, 1 D. 119.

2. They will all be presumed to have been present, and to have deliberated upon the act, unless the contrary expressly appears: *Ibid.*

3. Where the donee of a power to be executed by conveyance to another attaches unauthorized conditions, such conditions are void and the deed good. But only the grantee and those in privity with him are entitled to question the act: *Ready v. Kearsley*, 14 M. 215.

4. Where a power is conferred, a resort to the usual means in its execution must be understood as intended, unless others are indicated: *Grover v. Huckins*, 26 M. 476.

PRACTICE.

I. NOTICE OF TRIAL; CONTINUANCES.

- (a) *Notice of trial.*
- (b) *Continuances.*

II. FORM AND METHOD OF TRIAL.

- (a) *Trial in general.*
- (b) *Jury trial.*
- (c) *Trial by court; findings.*

III. THE TRIAL.

- (a) *Impanelling jury.*
- (b) *Right to open and close.*
- (c) *Conduct of trial.*
 - 1. Generally.
 - 2. Opening case; arguments.
 - 3. Conduct of jury.
- (d) *Special questions and answers; failure to answer.*
- (e) *The verdict.*
 - 1. Upon what based; consistency with pleadings or special findings.
 - 2. Form; amendment.
 - 3. What covers; conclusiveness.
 - 4. Directing verdict; duress.
- (f) *Nonsuit.*
- (g) *New trial.*
- (h) *Arrest of judgment.*

IV. MOTIONS, NOTICES AND ORDERS.

I. NOTICE OF TRIAL; TIME.

(a) *Notice of trial.*

1. R. S. § 1846, p. 463, § 4 (H. S. § 7551), requiring written notice of trial of issues in the circuit court, was not repealed by the act of April 3, 1848, entitled "An act to regulate and define the jurisdiction of the circuit and county courts:" *Storey v. Child*, 2 M. 107.

2. At least fourteen full days must elapse between the day of service of notice of trial and the first day of the next term: *Arnold v. Nye*, 23 M. 286, 293.

3. Parties stand on the same footing, under the rules for serving notice of trial, as attorneys, if they employ no attorneys: *Greenwood School District v. St. Clair Circuit Judge*, 41 M. 549.

4. Service of notice of trial by mail is sufficient if made on an attorney or on a party who appears in person in an appeal case at the circuit: *Ibid.*

5. An action based in part on a charge of conspiracy was noticed for trial without bringing in a portion of the defendants. A defendant who had pleaded asked that the case be set down for trial on a day certain, and at the day fixed objected that the others had not been brought in. On motion the plaintiff was allowed to discontinue as to those who had not been brought in. *Held*, that the right to object to the irregularity in noticing the case for trial was cut off by consenting to go to trial and by the order of discontinuance, and that it was of no consequence that the discontinuance was not entered on the record, and that there was no formal amendment of the declaration: *Cook v. Perry*, 43 M. 628.

6. Where a notice of trial is required to be posted "in some conspicuous place" in a certain office, the affidavit should state that it was put in a conspicuous place, and should mention the place: *People v. Bacon*, 18 M. 247.

7. A judgment rendered on issue joined without notice of trial or appearance at the trial should be set aside on motion. And if no proof of notice appears on the files the defendant is entitled to have judgment set aside unless the plaintiff proves notice: *Ibid.*

As to notices of trial in cases appealed from justices, see APPEAL, §§ 521-523.

As to notice of trial of probate appeal, see APPEAL, §§ 396-398.

(b) *Continuances.*

As to continuances in criminal cases, see CRIMES, IV, (c), 1.

As to adjournments in justices' courts, see JUSTICES OF THE PEACE, IV, (a).

8. The right to continue is incident to the power to hear and determine causes: *Caswell v. Ward*, 2 D. 374.

9. Adjournments of the circuit court from day to day during the same term are not continuances which require to be stated in the record: *The Milwaukee v. Hale*, 1 D. 306.

10. An amendment, at the trial, of the declaration, materially changing the issue, entitles defendant to a continuance with costs for the term: *Jennings v. Sheldon*, 53 M. 431.

11. Where a cause has been noticed for inquest under circuit court rule 99, though no affidavit of merits be filed, the defendant may produce witnesses on the inquest,—not, of course, to make out any substantial defence to the cause of action, but to show the correct amount due or *quantum* of recovery; and he may therefore move for a continuance of the cause: *Begole v. Ionia Circuit Judge*, 32 M. 61.

12. The probate court cannot direct a continuance in condemnation proceedings pending before a commissioner appointed by it: *M. C. R. Co. v. Tuscola Probate Judge*, 48 M. 638.

13. A void proceeding cannot be adjourned into validity: *White v. Spaulding*, 50 M. 22.

14. Execution does not lie to enforce an order imposing costs as a condition to a continuance, when the continuance has been waived: *Henderson v. Wayne Circuit Judge*, 40 M. 244.

Refusal to grant continuance in QUO WARRANTO, when not ground for new trial, see that title, § 83.

II. FORM AND METHOD OF TRIAL.

(a) *Trial in general.*

15. It seems that a plaintiff cannot be debarred from trying issues not met by the plea merely because he is in default for not replying to a defence which covers a part of the issues only: *Snyder v. Quarton*, 47 M. 211.

16. After a trial has begun, the defence cannot be excluded for defendant's refusal to pay his proportion of the stenographer's fees: *Wheaton v. Atlantic Powder Co.*, 41 M. 718.

17. It is a mistrial where parties submit a case upon a partial showing in connection with an agreed statement of facts, and stipulate that the court shall submit the case upon certain questions only, and that a particular verdict should be taken if he shall be of a certain specified opinion and shall so charge the jury: *Watts v. Tittabawassee Boom Co.*, 47 M. 540.

18. When a stipulation consenting to a discontinuance has been made by competent persons, and a subsequent motion to strike it from the files has been denied, the court cannot proceed with the case so long as the stipulation has not been in some way impeached

or the interests of counsel or of third persons involved: *Kittridge v. Toledo, A. A. & G. T. R. Co.*, 53 M. 354.

(b) *Jury trial.*

19. The right to trial by jury is waived in civil cases by neglecting to demand it, and if the judge orders one for his own satisfaction it does not concern the parties. But where neither party has demanded a jury, the assignment of the case for a particular day in term is a plain intimation that no jury will be called: *Mabley v. Superior Court Judge*, 41 M. 81.

20. When the trial of an appeal in probate matter involves questions of fact, a party is entitled, under H. S. § 6783, to a jury if he insists upon it: *Grovier v. Hall*, 28 M. 7; *Wissner v. Mabley's Estate*, 70 M. 271.

21. And if the jury disagree, the court should call another jury if either party requests it: *Grovier v. Hall*, 28 M. 7.

22. Said § 6783 does not prevent a trial by the court without a jury if neither party demands one: *Baptist Missionary Union v. Peck*, 9 M. 445.

23. A previous reference and trial thereon had before a referee under a stipulation will not cut off the right to a jury trial where a new trial has been ordered on reversal by the supreme court: *Hopkins v. Sanford*, 41 M. 243.

As to right of jury trial and the waiver thereof, see CONSTITUTIONS, III, (c).

As to waiver of jury trial on bill to annul marriage, see EQUITY, § 1143.

(c) *Trial by court; findings.*

As to findings in EJECTMENT, see that title, §§ 168-175.

24. A case made before trial under H. S. § 6469 must be signed by the parties or their attorneys, and filed with the clerk: *Farrand v. Bentley*, 6 M. 281.

25. Such a case is not a mere stipulation concerning evidence, from which inferences of fact are to be drawn; but it is equivalent to a finding of facts by a court, or the special verdict of a jury, in which every fact necessary to a recovery must be expressly found: *Goodrich v. Detroit*, 12 M. 279.

26. Where, therefore, a contractor claimed to recover of the city of Detroit the contract price of a certain public work, on the ground of negligence on the part of the city in collecting the assessment therefor, and a case was agreed upon and submitted to the court, which only set forth the steps which the city

had taken for the collection, it was held that the court had no right, upon such a case, to find the fact of negligence from the facts agreed upon and set forth: *Ibid*.

27. A stipulation of facts for purposes of judgment must be treated as a special verdict; and if it does not unequivocally show a liability the case must fail, as the burden of proof is on the plaintiff: *Gillett v. Detroit Board of Trade*, 46 M. 809.

28. H. S. § 6485, providing for trials by the court unless a jury is demanded, applies to a case where a claim is filed under H. S. § 7836 by a defendant in ejectment for the value of improvements on the premises: *Rawson v. Parsons*, 6 M. 401.

29. The credibility of testimony and its sufficiency to support a finding are to be determined by the trial judge when he sits without a jury: *Edwards v. Nelson*, 51 M. 121.

30. In a case tried by a judge without a jury it is for the trial judge himself, and not for the supreme court, to decide what conclusions the evidence will warrant: *Butts v. Davis*, 50 M. 310.

31. In an action tried without a jury it is for the trial judge, and not for the supreme court, to hear argument as to the force of the evidence, and as to inferences and presumptions, and to draw therefrom and state the necessary conclusions of fact: *Berrien County Treasurer v. Bunbury*, 45 M. 79.

32. H. S. § 6486, which requires the circuit judge who tries a case without a jury to give his decision on or before the first day of the term succeeding that in which the cause was submitted, is directory merely: *Rawson v. Parsons*, 6 M. 401; *Stansell v. Corning*, 21 M. 242, 245.

33. Whether, in ordinary cases tried by the court without a jury under H. S. § 6486, the "decision" must be written and filed with the clerk, *quere*; but a special finding or verdict by the court acting in the place of a jury — *e. g.*, in ejectment, where there is a claim for improvements — must be written and filed before judgment can be rendered upon it: *Rawson v. Parsons*, 6 M. 401.

34. In all cases where the cause is tried before the court without a jury, the decision of the court is required to be in writing and filed with the clerk: *Delashman v. Berry*, 20 M. 292.

35. By a long practical construction the signing of the judgment by the judge is equivalent to a finding of facts, except in those cases where a special finding is needed; but such a practice will not be extended beyond cases where the finding is general, and

made in term by the judge who tried the cause: *Cleveland v. Stein*, 14 M. 338.

36. No written request for a finding by the circuit judge is necessary, except where a party desires a detailed finding on the facts in the case as well as on the law points: *People v. Littlejohn*, 11 M. 60.

37. A finding of facts should be obtained as well as the conclusions of law dependent thereon, if a party to an action at law tried without a jury desires the supreme court to review the whole case: *Butts v. Davis*, 50 M. 310.

38. Requests for findings must be made before judgment: *Brown v. Haak*, 48 M. 229.

39. A special finding made by the court without special request will have the same effect as if made with it: *Delashman v. Berry*, 20 M. 292.

Special finding presumed to have been made on request, see ERROR, § 679.

40. The omission to find the facts and law before giving judgment is not an error of which the party who did not request it can complain: *Cook v. Wiles*, 43 M. 439.

41. It is not necessary to respond to every special request to find propositions, either of law or facts, so long as the refusal does not prejudice: *Babcock v. Beaver Creek*, 65 M. 479.

As to effect of incomplete or defective findings, or of failure to make findings, or to pass upon propositions submitted, see ERROR, §§ 227-231, 413, 467, 471, 475, 496, 497, 504, 693, 700, 703, 704.

42. A finding of facts made and filed after the judge who tried the cause has resigned is a nullity: *Ells v. Rector*, 32 M. 379.

43. A special finding by the court on a trial without a jury comes in place of a special verdict and serves all its purposes: *Delashman v. Berry*, 20 M. 292.

44. Where a court tries a cause without a jury and finds the facts specially, the proceeding is analogous to that for special verdict of a jury; and these findings are, under the statute, substantially a special verdict, and all the material facts established should appear therein: *Adams v. Champion*, 31 M. 233.

45. Special findings of fact are to be considered as in the nature of a special verdict, and construed by the same rules. Nothing can be inferred, supplied or added: *Burk v. Webb*, 32 M. 173; *Shelden v. Dutcher*, 35 M. 10.

46. The findings or any material part of them must be supported by evidence: *Hubbardston Lumber Co. v. Bates*, 31 M. 158.

47. A finding may be construed in connection with the pleadings if these contain suffi-

cient data to support it: *Edwards v. Nelson*, 51 M. 121.

48. A statement in a finding of facts that the declaration averred the defendant to be a foreign corporation has no legal importance, and an exception to it as untrue raises no question of law; the pleading cannot be changed by thus imputing to it something it has not: *Earle v. Westchester Fire Ins. Co.*, 29 M. 414.

49. Every finding is the responsible act of the judge, and it is not very important by what name it is called; if his mind has reached conclusions which involve questions of fact, they must prevail, even though mixed with legal inquiries, unless illegally reached: *Gillam v. Boynton*, 36 M. 236.

50. An inference of fact drawn from evidence cannot be made matter of law by setting it up as such in a finding: *Hogelskamp v. Weeks*, 37 M. 422.

51. Where individual findings of fact are complete in themselves and stand in lieu of special verdicts, all that are evidently intended as findings of fact will be so treated even if they are classed by mistake with conclusions of law: *Taylor v. Gladwin*, 40 M. 232.

52. Conclusions of law are not findings of fact, although so called: *Breitung v. Lindauer*, 37 M. 217.

53. A conclusion of law cannot be held unwarranted by the general finding, where no special finding is asked for, if it does not distinctly appear that all the evidence is given in the record; and this is so though the probability is that all the evidence is given: *Gass v. Van Wagner*, 63 M. 610.

54. A judge's finding of facts under circuit court rule 87 must be taken together as a whole; and where it states something which the other facts found show he could not have found literally as a fact, the supreme court will so construe it, if possible, as to make the finding consistent as a whole: *First National Bank v. Crowley*, 24 M. 492.

55. A finding should afford the means for its own interpretation and for fixing its own sense, and should be sufficiently distinct and definite to enable the court to decide upon the proper judgment; any clause that is equally open to two meanings, one of which imports lawful and the other unlawful action, should be received in the former sense: *Brown v. McHugh*, 36 M. 433.

56. Where, as a conclusion of law from a finding of facts, the judge holds the plaintiff entitled to recover, the finding must contain all the facts and circumstances necessary to make out a cause of action: *Wood v. La Rue*, 9 M. 153.

57. A judgment on a finding must rest on the actual state of facts as obtained and reported, and cannot be aided by facts not embodied in the finding. Nor can facts of equivocal import be made certain by conjecture, nor can grounds of illegality be presumed: *Brown v. McHugh*, 36 M. 433.

58. The finding of facts must set forth the facts found, and not merely the evidence tending to prove them: *Trudo v. Anderson*, 10 M. 357; *Thomas v. Sprague*, 13 M. 120.

59. A finding of facts should state conclusions of fact, and not merely evidence: *Yelverton v. Steele*, 40 M. 538.

60. A special finding by a trial judge must consist of something more than an informal statement made up of facts, items of evidence, offers of proof, rulings on objections and an opinion on the result. Such a document cannot be made the basis of a judgment: *Steele v. Matteson*, 50 M. 313.

61. It is not good practice, though it is not error, to include in the finding a statement of evidence or of the reasons for the court's conclusions: *Tower v. Detroit, L. & L. M. R. Co.*, 34 M. 328.

62. Conclusions from findings of fact must be drawn by the trial court and not left to the supreme court: *Mills v. Van Camp*, 41 M. 645.

63. In making a finding of facts a court may not only state all facts directly proved, but may include such as it may establish to its satisfaction by necessary inference: *Neumann v. Calumet & Hecla Mining Co.*, 57 M. 97.

64. A finding that does not decide everything submitted for decision cannot stand: *Danaher v. Ward's Estate*, 40 M. 300.

65. The sufficiency of a finding in the absence of a request for one more complete is determined by its consistency with the judgment: *Sawyer v. Van Housen*, 39 M. 89.

66. A finding is incomplete that does not state a distinct conclusion, or at least set forth sufficient facts to lead to one by inevitable inference: *Danaher v. Ward's Estate*, 40 M. 300.

67. A finding of facts which is not in express terms one of duress is not in legal effect equivalent thereto, unless the facts set forth are such that a conclusion of duress must inevitably follow; it is not enough that they lead to a strong inference of duress: *Feller v. Green*, 26 M. 70.

68. A finding that the condition of a contract in suit was performed "as the parties should be understood to have intended," and that the condition "ought to be held per-

formed," is equivalent to a finding that it was performed according to the intent of the parties, or according to its legal effect: *Tower v. D., L. & L. M. R. Co.*, 34 M. 328.

69. In an action on a promissory note a finding of facts that deals almost exclusively with a defence set up, and fails to find either that defendant gave the note in suit or that plaintiffs were holders of it, is fatally defective: *Shelden v. Dutcher*, 35 M. 10.

70. A special finding that plaintiff did not have unlimited authority to pay orders drawn by a third person upon defendant does not conflict with the fact shown by the testimony in the case that he had limited authority: *Brennan v. Busch*, 67 M. 670.

71. Where the finding of facts in a suit against two defendants fails to show any joint undertaking or liability of both, but rather shows a separate liability of one defendant only, it will not support a judgment against both defendants: *Ives v. O'Brien*, 38 M. 175.

72. Where a compromise is set up in defence, and is met with the claim of fraud in the compromise, there should be an explicit finding that fraud was committed against the plaintiffs, and not merely a recital of the facts relied upon as tending to prove it: *Shelden v. Dutcher*, 35 M. 10.

73. Where the execution of a paper is admitted for the purposes of the case by omitting to deny it on oath, a special finding that it had been executed would be surplusage, and a finding that it had not been would be struck out as outside the issue: *Jacobson v. Miller*, 41 M. 90.

74. A circuit judge may amend his finding of facts, and his action in so doing is not subject to review: *Sweetzer v. Mead*, 5 M. 33.

As to conclusiveness of findings, see ERROR, §§ 318-345, 469, 470.

As to presumptions in regard to findings, see ERROR, §§ 671-673, 675-681, 688.

As to effect of incorrect findings, rulings or conclusions, see ERROR, §§ 480, 481, 483, 484, 498, 499, 504, 505.

Necessity of exceptions to secure review of conclusions, see ERROR, §§ 296, 418-422.

As to assignment of error upon findings, see ERROR, §§ 163, 165, 166.

Further as to review of cases tried by court, see ERROR, §§ 261, 280, 281, 296, 299, 303, 304, 451, 505, 556, 606, 700-704; CASE MADE.

III. THE TRIAL.

(a) Impanelling jury.

75. Where the clerk fails to record the impanelling of the jury and proceeding to trial,

but enough appears to show that they took place, the omission is to be disregarded: *Kenyon v. Woodward*, 16 M. 326.

(b) Right to open and close.

76. The right to open and close the argument belongs to the party entitled to open and close the proofs: *Taff v. Hosmer*, 14 M. 309.

(c) Conduct of trial.

1. Generally.

77. Parties should so manage their cases in the trial courts as to fully develop their merits in order that the verdict and judgment may be final; and in will cases this is particularly important: *Fraser v. Jennison*, 42 M. 206.

78. Circuit court rule No. 63, providing that on the trial of issues of fact "one counsel only on each side shall examine and cross-examine witnesses," does not prescribe that the counsel who is conducting the examination shall alone make objections or motions and argue them: *Baumier v. Antiau*, 65 M. 31.

79. A trial judge must repress needless scandal and gratuitous attacks on the character of parties: *Rickabus v. Gott*, 51 M. 227.

80. A trial judge ought not to sanction such an abuse of cross-examination as lies in seeking to entrap witnesses into making inadvertent statements which the examiners may use unfairly: *Wheeler v. Wallace*, 53 M. 355.

81. It is unfairness to a litigant warranting reversal for the trial judge to permit one party in testifying to make scandalous and irrelevant remarks without rebuke, while he sharply reprimands the adverse party for similar remarks, and strikes out his testimony on his own motion: *Bulen v. Granger*, 56 M. 207.

82. It is not error for the court to stop a witness who is proceeding, after objection by counsel on the other side, to testify as to advice of counsel which appears from the record to be mere hearsay: *Kenyon v. Woodruff*, 33 M. 810.

83. Where defendant is sued as principal upon a contract made by his alleged agent, and the question of authority is raised, plaintiff and his witnesses should not be allowed to mislead the jury by references to defendant as the party dealing or dealt with: *Bond v. Pontiac, O. & P. A. R. Co.*, 62 M. 643.

84. Judges must take great care to say nothing in the hearing of jurors while a case is progressing which can possibly be construed to the prejudice of either party: *Cronkhite v. Dickerson*, 51 M. 178.

85. In an action for fraud in selling a second mortgage for a first, it was objected that testimony was too remote which showed that defendant, in giving the mortgage, had said he wanted it to trade, and could not do so if there was anything to show a prior mortgage. Defendant's counsel said the testimony was that the buyer of the mortgage had sought defendant, and not defendant him. *Held* prejudicial to defendant for the court to add in the hearing of the jury: "Yes, but he might have been lying in wait. If it had contained a covenant against encumbrances, and was a true statement of the situation of the property, it would itself have given the lie to the statement he is claimed to have made." *Ibid*.

86. It is improper for a trial judge to volunteer his notion of the purpose of a question when competent counsel, in asking it, have not seen fit to explain it; it is also improper for him to reflect, before the jury, upon the capacity and memory of counsel to whom clients have entrusted their interests; and it is positive error for him to state as a fact, when there is any question about it, that a witness has sworn to a particular statement: *Wheeler v. Wallace*, 53 M. 356.

87. It is not error for a court to speak of a paper as *prima facie* evidence if it is so, unless the remark is given further force, and allowed to exclude evidence against its conclusiveness: *Bulen v. Granger*, 56 M. 207.

88. A trial judge should not intimate his view of testimony on admitting it; nor should he reflect on the veracity of the witness by such a remark as that he will probably swear so-and-so anyway: *People v. Hare*, 57 M. 506.

89. Counsel should not be allowed to interrupt the court during a charge and hold a discussion with him upon the law and facts: *Novock v. M. C. R. Co.*, 63 M. 121.

2. Opening case; arguments.

90. An opening to the jury should state the facts which it is expected to prove, but should not set forth evidence in detail: *Scripps v. Reilly*, 35 M. 371.

91. Plaintiff's counsel in an action for libel was allowed, under objection, to read in his opening to the jury various articles which had appeared at different times in the paper that had published the alleged libel, the purpose being to introduce them as tending to show malice. Some of these, being afterward so introduced, were excluded from evidence; others were not offered at all. The judge charged that counsel had, "in his opening, read several articles which at the trial were

finally excluded. These should also be withdrawn from your consideration." *Held*, that the charge was insufficient, as, in saying nothing of the articles which had been read, but not afterward offered in evidence, the jury were left to give them such weight as they chose; and, as extrinsic matters not properly before them, they vitiated the verdict: *Ibid*.

92. A. devised part of his farm to B., an adopted daughter, and died leaving a widow who became administratrix, the will not being produced. The widow married again, and died without being discharged as administratrix. She left all her property to her husband. B. married, had a son, lost her husband, and married again. *Held* that, in proceedings by her to establish the missing will, contestant's counsel had no right, in opening to the jury, to relate dealings between the second husband of A.'s widow and the proponent's son on one side, and the contestant on the other, in regard to the possession of the testator's farm, nor to narrate legal proceedings for its possession brought by proponent and the second husband against contestant. These matters were foreign to the issue. And it was improper to suggest that B.'s son was born too soon after her marriage, and hearsay for a witness to state what he had heard Mrs. A. say on the subject. It was also improper to show by a physician how soon birth happened, as this had no legal connection with the issue: *Rickabus v. Gott*, 51 M. 237.

93. In trover against the assignee of a chattel mortgage for property seized thereunder, plaintiff's counsel claimed, in his opening to the jury, that plaintiff owned the property and had never sold it; that defendant had never paid anything for the mortgage, and that before defendant took the mortgage it had been much more than paid in full. *Held*, that the opening was sufficient to notify the defence that plaintiff meant to go into a full investigation of the dealings which he had had with the mortgagee before giving the mortgage, and that under such an opening, although he had not used the word "usury," he could show that the mortgage did not represent any actual indebtedness: *Canning v. Harlan*, 50 M. 320.

94. Allowing an improper opening of a case may be such an abuse of discretion as to warrant reversal: *Scripps v. Reilly*, 35 M. 371.

95. Offers of evidence made within the hearing of the jury may be such, even if rejected, as to require a reversal of the judgment: *Scripps v. Reilly*, 35 M. 10.

96. An opening to the jury may be so unfair in its statement of irrelevant facts, and so

well calculated to prejudice the jury improperly, as to justify setting aside a verdict obtained by the party making it. But the supreme court will not reverse a judgment for an unfair opening except in a very plain case: *Porter v. Throop*, 47 M. 313.

97. Defendant's counsel has a right to comment to the jury upon the plaintiff's omission to produce important witnesses who are within reach: *Gavigan v. Scott*, 51 M. 373.

98. Everything tending to influence a jury but not legally admissible should be kept from their knowledge during the trial: *Scripps v. Reilly*, 38 M. 10.

99. It is error to permit the charge and verdict in an action of trover to be read in the hearing of the jury on the trial of an action of replevin between the same parties as bearing on the subject-matter: *Corning v. Woodin*, 46 M. 44.

100. Permitting counsel to read authorities to the court and to argue thereon, after his opening argument to the jury, is discretionary with the court: *Davis v. Gerber*, 69 M. 246 (April 6, '88).

101. Counsel should not be permitted to read to the jury and comment upon cases found in the books of reports, upon the question, submitted to them as one of fact, whether a draft was presented for payment in a reasonable time: *Phoenix Ins. Co. v. Allen*, 11 M. 501.

102. Contestants in a will case offered in their opening to read to the jury a passage from a work on mental diseases, enumerating certain causes of insanity. *Held*, that the court properly refused to allow it: *Fraser v. Jennison*, 42 M. 206.

103. In an action for a negligent injury counsel may, it seems, in his opening to the jury, explain the evidence he intends to introduce by showing a diagram of the premises: *Battishill v. Humphreys*, 64 M. 494.

104. In an action for assault and battery counsel, in his argument to the jury, should not be allowed to use a map of the premises where the assault occurred, there being no proof of its correctness other than its adoption by the city council: *Zube v. Weber*, 67 M. 52.

105. A model may properly be exhibited to the jury in a case involving questions of construction, if there is testimony that it correctly represents distances and dimensions; its correctness, if disputed, is a question for the jury: *Richmond v. Atkinson*, 58 M. 413.

106. In an employee's action to recover for injuries sustained by being caught in his employer's machinery it is not error for the court

to allow counsel, in addressing the jury, to state his understanding of the law and what he regards as defects therein: *Kean v. Detroit Copper Mills*, 66 M. 277.

107. The only facts which counsel are properly permitted to comment upon before a jury are such as have been legally elicited upon the trial of the cause: *Carne v. Litchfield*, 2 M. 340.

108. Counsel, in his argument to the jury, may state such inferences of fact as he in good faith draws from all the circumstances of the case, and what would be likely to follow if such inferences should turn out to be correct: *Hart Manuf. Co. v. Mann's Boudoir Car Co.*, 65 M. 564.

109. Counsel have no right to comment upon papers that have not been put in evidence, or on the conduct of the parties in connection with them: *Donovan v. Richmond*, 61 M. 467.

110. Counsel in summing up a case must not go outside of the proper issue for the jury: *Seligman v. Ten Eyck's Estate*, 60 M. 267.

111. A trial judge must restrain counsel from commenting on testimony that has been excluded, if objection is made to such comments: *Hollywood v. Reed*, 57 M. 235.

112. A witness for defendant having testified that plaintiff requested him to get defendant drunk at his expense, defendant failed to connect such testimony with the case and allowed it to be stricken out. *Held*, that it was error to permit him to comment afterwards upon it, against objection, in his argument to the jury: *Hitchcock v. Moore*, 70 M. 113 (April 27, '88).

113. Counsel have no right to put before the jury, by way of argument, what they know of the case, outside of the testimony: *Amperse v. Fleckenstein*, 67 M. 247 (Oct. 13, '87).

114. Counsel must not state in the jury's presence what took place or what rulings were made on a former trial: *Bulen v. Granger*, 58 M. 274.

115. It is improper for counsel to state in the jury's hearing what occurred upon a former trial; and judgment will be reversed for such cause if it appears that the remarks were likely to prejudice the jury: *Battishill v. Humphreys*, 64 M. 514.

116. Where counsel, in summing up, appeal to a jury's prejudice against non-residents and make injurious remarks not justified by evidence, and exception is taken to this conduct, it is error if the trial judge omits to stop it and counteract its effect. So *held* where counsel said that attaching creditors adversely

interested were hogs, and wanted to gobble up all the property: *Bedford v. Penny*, 58 M. 424.

117. A verdict will not be disturbed for extravagances of counsel in summoning up and urging inferences from facts in evidence, unless the trial court has plainly allowed them to mislead the jury: *Staal v. Grand Rapids & I. R. Co.*, 57 M. 240.

118. Extravagant or irrelevant remarks of counsel in the heat of argument to the jury, which are not apt to mislead or prejudice the jury — e. g., statements in a railroad negligence case in regard to the compensation received by defendant's attorneys, and alluding to Vanderbilt and Gould — are not ground of reversal: *Battishill v. Humphreys*, 64 M. 514.

119. Remarks of counsel in his closing argument before the jury, though referring to facts not in evidence, and commenting upon defendant's plea of the statute of limitations, and his failure to introduce certain evidence, were held not to justify a reversal, having evidently been made in answer to remarks of opposing counsel: *Miner v. Lorman*, 66 M. 530 (June 23, '87).

120. Improper remarks of counsel on the argument below are not necessarily ground for reversal unless they are clearly prejudicial: *Donovan v. Richmond*, 61 M. 467.

121. There is no absolute right on the part of counsel for defendants to cut off further argument to the jury by plaintiffs' counsel by declining to reply to the opening argument on plaintiffs' behalf, at least where other counsel for plaintiffs desire to be heard; but this matter comes within those discretionary rules which must, unless in extreme cases, leave the trial judge to determine the course of the procedure. It is the duty of the judge, however, to so regulate this matter as to give a fair opportunity for counsel to thoroughly present the whole case to the jury: *Barden v. Briscoe*, 36 M. 255.

122. Under circuit court rule 63 as amended in 1885, providing that counsel shall be allowed no less than one hour, if desired, to sum up the case, and not more than two hours, unless the court shall otherwise order, it is error for the court to limit the argument on each side to one hour in a criminal case in which two counsel are engaged for the defence who request longer time: *People v. Labadie*, 66 M. 702.

3. Conduct of jury.

123. Juries must be absolutely free from the influence or counsel of any party on whose affairs they are to act: *Paul v. Detroit*, 82 M. 103.

124. A jury, when sworn, is part of the court, and cannot be put beyond its supervision: *Stowell v. Jackson Supervisors*, 57 M. 81.

125. It is discretionary with a judge in an action for sidewalk injury to order the jury to inspect the place where the injury occurred; and it was held no abuse of discretion to allow them to do so six months after the injury took place: *Williams v. Grand Rapids*, 58 M. 271.

126. It is within a court's discretion to refuse to allow a jury to visit the premises where a job of building was done, the value of which is contested: *Richmond v. Atkinson*, 58 M. 413.

127. Where it does not appear from the record that the jury retired to consult, it will be presumed that they found their verdict without leaving their seats, so that no officer was necessary: *The Milwaukee v. Hale*, 1 D. 306.

128. That the jury were put in charge of an officer who had entered the complaint whereon respondent was being tried, and who had also testified in behalf of the people, is no ground for new trial: *People v. Coughlin*, 65 M. 704.

129. The jury have no right to take with them into their room papers and books that have been given in evidence; but if they do so, though it may be misbehavior in them, it will not set aside the verdict: *Findley v. People*, 1 M. 234.

130. A jury in a circuit court has no concern with the appeal papers in a case brought up from before a justice: *Richardson v. McGoldrick*, 43 M. 476.

131. Jurors cannot ordinarily take books, papers and depositions with them to the jury-room. But the irregularity of permitting it is waived by failing to object thereto: *Chadwick v. Chadwick*, 52 M. 545.

132. The objection that the jury took to their room a memorandum made by counsel cannot be raised for the first time in the supreme court: *Robinson v. Walsh*, 54 M. 506.

133. It is discretionary with the trial judge whether he will grant or refuse the request of a party that the jury be allowed to take a written exhibit to the jury-room: *Canning v. Harlan*, 50 M. 320.

134. Where the genuineness of a document is in dispute the jury should not be permitted to take it to their room for the purpose of comparing the handwriting of the body thereof with that of the signature to aid them in determining whether it is a forgery: *Foster's Will*, 34 M. 21.

135. Where a will is in litigation there is no error in refusing to require the jury to take

photographic copies of it to the jury-room, or, indeed, to take the original will itself, if the jury does not ask for it and a party objects. On the other hand, there may be no error in permitting the use of photographic copies if their identity and correctness are secured: *Ibid.*

136. It is sometimes proper to allow the jury to take to the jury-room documents which have been admitted in evidence; but it should not be allowed except in cases where the propriety of it is very obvious, and in general not when either party objects: *Kalamazoo Novelty Manuf. Co. v. McAlister*, 36 M. 327.

137. Permitting the jury, against objection, to take with them to their room a book of which only three pages had been introduced in evidence, with no other safeguard against their examining and giving consideration to those parts of the book which had not been made evidence, except a direction to them to look only on a specified page, is error. And whether the rest of the book should be sealed up, *quere: Ibid.*

138. It is not error, and is in accord with established practice, to permit a jury to take to the jury-room a computation made by the plaintiff's attorney showing the amount claimed to be due; it is not evidence, and the jury are not bound thereby. (But see *infra*, § 143): *Millar v. Cuddy*, 43 M. 273.

139. Statements of account by both parties to an action for the breach of a contract of sale may properly be allowed to be taken to the jury-room, if the jury desires, subject to objection: *Wonderly v. Holmes Lumber Co.*, 56 M. 412.

140. Where the articles shown to have been in a garnishee's possession at the time of the service of the writ are too numerous for the jury to remember them without a written memorandum, they may take a list of such articles to their room: *Bethel v. Linn*, 63 M. 464.

141. A paper can be taken to the jury-room by the judge's permission, if there is no question as to its authenticity, but only as to its contents. But such permission is reviewable in the light of results: *Bulen v. Granger*, 63 M. 311.

142. The jury should not be allowed to take into the jury-room the instructions marked by the court as "given;" nor, unless by consent of the parties, any paper used in the cause, unless it may be items of an account: *Hewitt v. F. & P. M. R. Co.*, 67 M. 61 (Oct. 6, '87).

143. Memoranda or statements made by

counsel shall not, unless by consent of the opposing party, be given to the jury to be used by them in the jury-room. (Overruling *Millar v. Cuddy*, 43 M. 274): *Harroun v. C. & W. M. R. Co.*, 68 M. 208.

144. Permitting the jury to take to their room a memorandum of plaintiff's counsel containing the highest estimates made by his witnesses as to the value of animals negligently killed by defendant, *held* harmless error, under the circumstances of the case: *Ibid.*

145. The only exception to the rule forbidding the jury to take with them to their room memoranda or statements of counsel exists in cases involving the investigation of long accounts, where numerous items are to be passed upon, and where there are no bills of particulars; the trial judge may, in his discretion, permit such taking in such cases: *Ibid.*

146. After the jury have gone out further instructions should not be given them, except in open court in the presence of the parties: *Snyder v. Wilson*, 65 M. 336.

147. In forcible entry proceedings the jury, after retiring, asked instructions as to their verdict, and the commissioner who tried the case told them it should be in form either guilty or not guilty. It did not appear that the parties complaining of this action were absent, and the commissioner did not know whether their counsel were present. *Held*, that there was no error apparent, and that a complaint of unauthorized communication with the jury would not be sustained: *Knapp v. Gamsby*, 47 M. 375.

148. In an action involving the measurement of logs sold, the jury were charged that if the parties agreed that a certain scale should be followed unless the purchaser was notified to the contrary, that scale must govern; but if they did not so agree, and the vendor told the purchaser to notify him if he wanted the logs rescaled, and the purchaser said nothing, it would not be an assent. Afterwards the court sent for the jury and told them, in the absence of the vendor's counsel, that he did not mean to charge them that they could not find an assent from the purchaser's silence, and that they might draw their own inferences from the conduct of the parties. *Held*, that the original charge would not have been erroneous unless the notice to the purchaser was given before the contract was closed and the logs paid for, and that the absence of the vendor's counsel did not prejudice him when the possible false impression was corrected: *Smith v. Kelly*, 43 M. 390.

149. A jury, after being discharged, were called back to answer some special questions that had been submitted to them but were not answered when they gave their general verdict. Some of the jurors had reached the street. The answers were consistent with the general verdict and made no change in the judgment. *Held* that, in the absence of any objection to the general verdict, there was no prejudicial error: *Dailey v. Douglass*, 40 M. 557.

150. The officer having the jury in charge may not remain in their room during their deliberations, and if he does so it is ground for a new trial: *People v. Knapp*, 42 M. 267.

151. A circuit judge may be compelled by *mandamus* to set aside a verdict and grant a new trial because of the jury's communicating and drinking with outside persons after being sent out to consider their verdict: *Churchill v. Alpena Circuit Judge*, 56 M. 586.

152. New trial need not be granted on the ground that the jury were not kept in a private place until they rendered their verdict, if they were not permitted to leave their room until after they had agreed upon the verdict: *People v. Francis*, 52 M. 575.

Further as to communications with jury, see JUSTICES OF THE PEACE, §§ 206-210.

(d) *Special questions and answers; failure to answer.*

153. Special questions to the jury are to enable the court to learn what view they take of the material issues, and to correct wrong inferences from the facts which they find to exist: *Cole v. Boyd*, 47 M. 98.

154. The purpose of having special findings is to know what the rights of the parties are, and to have them spread upon the records: *Probate Judge v. Abbott*, 50 M. 479.

155. It was right in an action of ejectment to refuse to submit to the jury as a separate question, under H. S. § 7606, an inquiry so general as "By what acts did defendant's ancestor claim to hold possession adversely to plaintiff?" Questions submitted under this statute must be particular questions of fact, and such as involve legal consequences and have some controlling force in reaching a conclusion: *Dubois v. Campau*, 28 M. 804.

156. As parties have the right to test the correctness of a general verdict by submitting special interrogatories upon particular questions of fact involving legal consequences that would have controlling force in reaching a conclusion, a court cannot refuse to submit such questions: *Harbaugh v. Cicotte*, 83 M. 241.

157. Special questions can only be submitted to a jury in cases where their verdict is conclusive upon the facts found; not, for example, upon items of an administrator's account: *Loomis v. Armstrong*, 68 M. 355.

158. It is not error to decline to put to the jury special questions that either have no evidence to warrant them, or relate to undisputed points or inconclusive facts. Such questions should be few and simple, pertinent and material to the issue, and such as the evidence would oblige the jury to pass on: *Fowler v. Hoffman*, 81 M. 215.

159. The jury cannot be required to find specially upon any question the answer to which would in no way affect a general verdict: *Sheahan v. Barry*, 27 M. 217.

160. Special questions the answers to which would be inconclusive and powerless to control a general verdict should be withheld: *Frankenberg v. First National Bank*, 38 M. 46; *Harbaugh v. Cicotte*, 83 M. 241; *Michigan Paneling Co. v. Parsell*, 38 M. 475; *Swift v. Plesmer*, 39 M. 178; *Banner Tobacco Co. v. Jenison*, 48 M. 459; *Dickerson v. Dickerson*, 50 M. 37; *Power v. Harlow*, 57 M. 107.

161. Special questions that are immaterial to the issue are properly withheld: *Hart Manuf. Co. v. Mann's Boudoir Car Co.*, 65 M. 564; *Miner v. Vedder*, 66 M. 101 (May 5, '87).

162. An admission by a party to a suit does not relieve the judge from the duty of submitting to the jury a special question as to the admitted fact when the latter affects a further essential question in settling the case: *Harbaugh v. Cicotte*, 83 M. 241.

163. Requests for special findings cannot be refused on the ground that the parties had agreed on the facts in the presence of the jury; the facts must be set forth on the record, and until they are they cannot be regarded as settled: *Probate Judge v. Abbott*, 50 M. 479.

164. In an action for negligence, special questions should not be submitted requiring the jury to specify what defendant did or omitted; if the jury is satisfied from all the circumstances that he was wanting in due care, plaintiff is entitled to a general verdict: *Peer v. Ryan*, 54 M. 224.

165. Special questions may properly be submitted to the jury in a libel suit, if the case is a proper one for the jury, to determine whether defendant acted in good faith and with due care: *Peoples v. Detroit P. & T. Co.*, 54 M. 457.

166. It is not error to refuse to submit special questions upon immaterial, inconclusive or admitted matters: *Pigott v. Engle*, 60 M. 221.

167. Refusal to submit a question for specific findings is not error when it involves facts from which no legal conclusion can be drawn: *People v. White*, 58 M. 538.

168. It is not error to refuse to submit a specific question to the jury when another is submitted that is better adapted to the case: *Chilson v. Wilson*, 38 M. 267.

169. It is not error to withhold a special question where it involves law rather than fact and is covered by instructions: *Banner Tobacco Co. v. Jenison*, 48 M. 459.

170. Refusal to submit special questions that cannot control the result is not error: *Castner v. Farmers' Mutual Ins. Co.*, 50 M. 273.

171. Where special questions to the jury do not meet the whole case the defect must be pointed out when they are submitted, and if it is not, the special findings are not open to minute criticism: *Dupont v. Starring*, 42 M. 492.

172. In a case of a contested boundary between two city lots the jury were asked to find specially how long the old line fence had stood and been regarded as the boundary line. Held, that as the establishment of a line by adverse claim and acquiescence was a subject of dispute, it was to be presumed that the jury supposed the questions contemplated such a state of things, and not merely a case in which no question as to the correctness of the line had ever arisen: *Ibid*.

173. It is error to instruct a jury that if they are of opinion that there is not sufficient evidence to satisfy their minds as to a special question proposed to them under H. S. § 7606, they may so state, and are not obliged to answer it absolutely. No question should be put to them which is not material to the inquiry, and upon every material question one party or the other holds the affirmative, and if he fails to make out his case upon it by the evidence, the finding should be against him: *Crane v. Reeder*, 25 M. 303.

174. A *prima facie* showing in a civil case, if not disproved, entitles the party holding the affirmative to a verdict, even though the showing may not be such as fully to satisfy the mind. A special question to a jury in the form, "Are you satisfied that," etc., is therefore likely to be unfair to the side against whose showing it is directed, and should be rejected, being also inadmissible under the common law, where verdicts always find either the facts or the legal conclusions from them: *Ibid*.

175. It is not a valid charge of error that the questions to the jury were put and an-

swered in the court room. It is never necessary to require the jury to withdraw unless they desire it: *Bottomley v. Goldsmith*, 36 M. 28.

176. Failure to answer special questions submitted to the jury cannot affect the verdict against the party asking them where answers in his favor would not affect the general result: *Johnson v. Continental Ins. Co.*, 39 M. 33.

177. A general verdict need not be excluded for the failure of the jury to answer special questions that are of no legal consequence: *Pettibone v. Maclem*, 45 M. 381.

178. It is no ground for reversal that the jury returned no answers to special questions as to facts that were purely collateral and were not involved in the real issues: *Toulman v. Swain*, 47 M. 82.

179. Where one who sues on a promissory note claims to be a *bona fide* holder of it, and the defence is that it was given for intoxicating liquors, it is not a material or proper question for the jury whether the plaintiff, knowing the business of the payees, did not purposely avoid inquiring into the consideration of the note; and their omission to answer this as a special question is therefore of no consequence: *Bottomley v. Goldsmith*, 36 M. 27.

180. Juries cannot be compelled to answer special interrogatories, but their failure to answer or find any affirmative fact necessary to sustain their verdict nullifies the verdict, and the result is a mistrial: *Harbaugh v. Cicotte*, 33 M. 241.

181. The findings actually made in response to specific questions do not cure the errors committed on the trial, where some proper questions are not answered at all, and others are so answered that the responses are in law no findings at all and cannot be made the basis for any conclusion. So far as relevant questions properly put to the jury remain unanswered there is a mistrial: *Crane v. Reeder*, 25 M. 303.

182. Mistrial occurs where the jury say that they do not know, in answer to special questions that, under the charge and evidence, are material to the issue: *Wilson v. Pontiac, O. & P. Austin R. Co.*, 57 M. 155.

183. Where a jury answered a special question by saying they had no means of knowing, and that they did not know from the evidence, and afterwards answered simply that they did not know, and court and counsel treated the answer as a negative, it was so treated in the supreme court: *Maclean v. Scripps*, 52 M. 215.

184. A general verdict was given for the

plaintiff in a libel suit based on the republication of statements already published in Canada, and affecting the reputation of plaintiff, who was a professor in the University of Michigan. The jury were then asked specially whether the publication had been made because the charges had been published generally in Canadian papers, injuriously affecting, in plaintiff's opinion, the best interests of the university, and for the purpose of calling attention thereto as a matter of public duty, and in order that there might be a public investigation by the regents of the university. The jury answered, as to previous publication, "We say not generally to his knowledge, the evidence only going to show he had seen the two Tilsonburg papers;" and as to the purpose of the republication they answered negatively. They afterwards answered the whole question in the negative. *Held*, that the answers were legally identical: *Ibid*.

185. Special questions were submitted to a jury bearing upon the liability of defendants as partners. If answered in one way such a liability could not be established. They gave a general verdict for the plaintiffs, but returned that they were not able to agree upon any one of the special questions. H. S. § 7606 makes the special findings control the general verdict. *Held*, that a direction by the court that, having found a general verdict, they were bound to answer the special questions in harmony with it, and instructing them how to frame such replies, was error, as its effect was that the court, and not the jury, decided the material issues: *Cole v. Boyd*, 47 M. 98.

186. Where a special question to the jury as to whether they found a machine was sold with a recommendation or a warranty that it would do good work was answered yes, it was *held* that the answer did not determine whether they found a warranty or a mere recommendation: *Worth v. McConnell*, 42 M. 473.

(e) *The verdict.*

As to verdicts in justices' courts, see JUDGES OF THE PEACE, §§ 223-229.

As to the verdict and findings in criminal cases, see CRIMES, §§ 966-982.

As to aid by verdict of defects in pleadings, etc., see PLEADINGS, X.

1. Upon what based; consistency with pleadings or special findings.

187. A general verdict is bad if a single count in the declaration is fatally erroneous: *Stange v. Clemens*, 17 M. 403.

188. Where action is brought against defendants jointly on a several obligation there should be a verdict for defendants: *Larkin v. Buttersfeld*, 29 M. 254.

189. A verdict must be based upon evidence; the jury cannot assume facts in default of evidence: *Hutchinson v. Dubois*, 45 M. 148; *Marquette v. Ward*, 50 M. 174.

190. A jury should not be allowed to assume the existence of fraud or oppression where there is no proof thereof: *Rayburn v. Mason Lumber Co.*, 57 M. 274.

191. The jury, in an action for the value of surgical services, has no right to find malpractice without testimony from persons who are qualified to give opinions on the methods of treatment: *Wood v. Barker*, 49 M. 295.

192. A jury has no right to ignore testimony that has not been discredited, and form independent conclusions, without testimony, on matters that require proof beyond their conjectures or opinions: *Ibid*.

193. Suspicion will not justify a verdict in the absence of proof: *Campbell v. Sherman*, 49 M. 534.

194. A verdict based on one juror's statements of fact, not made upon the witness-stand, is illegal and in violation of the juror's oath: *Foster's Will*, 34 M. 21.

195. The answer of a jury to a special question is of no account if based on testimony improperly received: *Peoples v. Detroit Post & T. Co.*, 54 M. 457.

196. The finding of the jury, in answer to a special question that a party acted in good faith in purchasing land, is not binding where the record shows that the jury did not apply the proper legal standard to test the good faith of the purchase under the facts and circumstances of the case: *Oliver v. Sanborn*, 60 M. 346.

197. Unless the jury abuse its discretion a verdict is not to be set aside merely because it does not appear exactly how it was made up: *Swift v. Plessner*, 39 M. 178.

198. No greater preponderance of proof is required to authorize a verdict in one civil action than in another: *Elliott v. Van Buren*, 33 M. 49.

And see EVIDENCE, §§ 1450-1462.

199. A verdict must always be read in the light of the pleadings, and when it refers to documents annexed to it they must be regarded as incorporated in it; and, if not annexed, the verdict may be aided by the judge's notes, where they will suffice for that purpose: *Keeler v. Robertson*, 27 M. 116.

200. The general verdict of a jury is controlled by its special finding when the latter

is so inconsistent with the verdict as to fail in some essential particulars to support it: *Harbaugh v. Cicotte*, 83 M. 241.

201. A verdict should not be sustained where, on the whole special finding, it is reasonably certain that it ought not to be: *Dupont v. Starring*, 42 M. 492.

202. The whole verdict of a jury must be construed together; and general findings, or conclusions inconsistent with special findings, will be disregarded as wrong conclusions upon facts found: *Keeler v. Robertson*, 27 M. 116.

203. Where two special findings are inconsistent with each other, but only one of them is inconsistent with the general verdict, they neutralize each other and leave the general verdict to stand: *Foster v. Gaffield*, 84 M. 856.

204. The finding of a jury is contradictory and inconclusive where the question submitted involves matter of law as well as of fact, and the findings upon matters of fact show that there was no basis for the conclusion which they reached upon the whole question: *Loomis v. Rogers Township Board*, 58 M. 135.

2. Form; amendment.

As to certainty and other requisites of verdicts in EJECTMENT, see that title, §§ 177-179.

As to verdict where double or treble damages are claimed, see DAMAGES, §§ 411, 484, 435, 438-440, 443.

205. Leave to find a sealed verdict should be granted where there is likely to be prolonged delay after agreement before the verdict can be received: *Pierce v. Pierce*, 38 M. 412.

206. The statute authorizing special questions to be submitted to the jury contemplates their aiding or explaining a general verdict, but does not take away the power to find special verdicts: *Hendrickson v. Walker*, 32 M. 68.

207. The jury may find a special verdict, but the court cannot compel them to do so, or to give reasons for a general finding: *Peck v. Snyder*, 13 M. 21.

208. A jury cannot be required to report the testimony on which they have found: *Turner v. Phoenix Ins. Co.*, 55 M. 236.

209. Where there are two issues,—the general issue and an issue on a special plea,—and the jury find a verdict for the plaintiff on the general issue, but render no verdict on the other issue, the judgment will not be reversed if the verdict on the general issue negatives the special plea of defendant on which the other issue was joined, and the jury could not have found for the plaintiff had defendant es-

tablished the truth of his special plea: *Brooks v. Delrhyple*, 1 M. 145.

210. A general verdict in a case submitted to the jury on more than one point does not show how they determined either question considered alone: *Dewey v. Alpena School District*, 48 M. 480.

211. Defendant in a libel suit is entitled to have the jury say upon what count or counts they found against him, if the structure of the declaration and the state of the facts leave it doubtful: *Scripps v. Reilly*, 35 M. 372.

212. The jury, in rendering a special verdict, should confine themselves to the facts, and leave the court to render such judgment upon the facts so found as the law warrants: *Erwin v. Clark*, 13 M. 10.

213. In the case of a special verdict, no facts can be assumed not therein stated, nor can any be inferred from those found; but the finding must be taken as made, subject, however, to the allegations in the pleadings: *Buckley v. Great Western R. Co.*, 18 M. 121.

214. The statute authorizing special findings and a judgment thereon instead of on the general verdict, on the ground that the verdict and findings are inconsistent, contemplates that the trial court will have knowledge of the facts developed on the trial to aid it in determining the consistency of the general verdict with the special findings; as a general verdict does not set forth the elementary facts required for its production, the determination involves a consideration of something beyond a mere comparison of the language of the verdict and the findings: *Gilbert v. American Ins. Co.*, 30 M. 400.

215. Though the verdict may not conclude formally or punctually in the words of the issue, yet if the point in issue can be concluded out of the finding the court will work it into form according to the justice of the case: *Lamberton v. Foote*, 1 D. 102; *Lockwood v. Drake*, 1 M. 14.

216. The want of the technical conclusion, commonly inserted with an alternative finding according to the court's determination on the law, does not affect the force or validity of a special verdict; where the jury find the facts, they find for the party who should prevail on those facts, and he is entitled to judgment: *Hendrickson v. Walker*, 32 M. 63.

217. A verdict in *assumpsit*, the plea being the general issue, "that the defendant is guilty, in manner and form as alleged in the declaration," is a mere clerical error, properly amendable, and judgment may be rendered thereon for the damages thereby assessed: *Lincoln v. Cambria Iron Co.*, 108 U. S. 412.

218. Juries rarely give very formal verdicts; and inquiries of the jurors in court, and amendments for the purpose of putting in due form what the jury mean by their finding, are unobjectionable: *Sleight v. Henning*, 13 M. 371.

219. A jury brought in a sealed verdict, "We find for the plaintiff the full amount claimed by him on the note." It seems that it is not objectionable to permit the plaintiff's counsel to state to the jury what the amount was, and for them to return a verdict for that amount in due form: *Olcott v. Hanson*, 12 M. 452.

220. Where a purchaser of goods has left them with the vendor and the latter recovers judgment for their value, the force of the verdict is not destroyed by the additional direction that plaintiff deliver them to defendant. This merely states the legal consequence of the judgment, and may be rejected as surplusage: *Rawson v. McElvaine*, 49 M. 194.

As to certainty of verdict in ejectment, see EJECTMENT, §§ 177, 178.

As to amendment of verdict before trebling damages, see DAMAGES, § 435.

3. What covers; conclusiveness.

221. In trover for goods which plaintiff had sold in reliance on false representations, and defendant had seized upon a chattel mortgage given him for the purpose of defrauding plaintiff, a general verdict in plaintiff's favor covers the questions of defendant's participation in or knowledge of the fraud, if those questions were submitted to the jury: *Robinson v. Walsh*, 54 M. 506.

222. Where the issue submitted was whether an alleged will was the decedent's last will, and whether at the time of executing it he was of sound disposing mind and not under the influence of the devisee named therein, a verdict that the will was decedent's last will, etc., and that at the time of executing it he was of sound disposing mind and memory and capable of disposing of his property by will, was held to cover the whole issue and to negative all undue influence: *White v. Bailey*, 10 M. 155.

223. The terms of the verdict control as to what damages shall be trebled in trespass after a forcible entry or detainer: *Houser v. Melcher*, 40 M. 185.

224. The conclusion of a jury upon a question of fact fairly submitted to it is final: *Filer v. Jenks*, 38 M. 585.

225. Where there was evidence tending to show a promise made by an authorized agent

of defendant to pay plaintiff a given sum for his services, and the facts have been properly submitted to the jury, who have found for plaintiff, their verdict is final: *Wyman v. Crowley*, 33 M. 84.

226. A verdict is conclusive as to the facts necessary to be found in order to support the plaintiff's claim: *Boglarsky v. Singer Manuf. Co.*, 65 M. 510.

227. Where special damages are claimed, and the case is submitted under such instructions as would require the jury to return a verdict therefor if there were any, a verdict for defendant determines that none were suffered: *Clark v. Wiles*, 54 M. 824.

228. Facts cannot be considered established by the finding of a jury, if the finding was based on improper testimony and an erroneous charge: *Fairbanks v. Bennett*, 52 M. 61.

229. Where a case is left to the jury on the question of damages only, the verdict must stand unless a sufficient justification appears from defendant's showing: *Davis v. Burgess*, 54 M. 514.

230. One who submits a special question to the jury is bound by an adverse finding: *Stevens v. Rose*, 69 M. 259.

231. A verdict is no precedent, and settles nothing but the immediate controversy to which it relates: *McGinnis v. Canada Southern Bridge Co.*, 49 M. 466.

As to conclusiveness of verdict, see ERROR, §§ 303-316.

As to effect of verdict out of chancery, see EQUITY, § 1289.

4. Directing verdict; duress.

232. The power to direct a verdict for defendant on counsel's presentation of plaintiff's case must be cautiously exercised; and if the case as stated is sufficient except on some particular point, the judge should always direct attention to the defect, so the omission may be supplied if accidental: *Spicer v. Bonker*, 45 M. 630.

233. It is not good practice to decide, upon the opening of counsel, that there is no cause of action, and the cases are exceptional where it can safely be done: *Leonard v. Beaudry*, 68 M. 312.

234. Where, in any view that can be taken of the testimony, a party is entitled to a verdict, he has a right to a charge accordingly: *Pennsylvania Mining Co. v. Brady*, 16 M. 332.

235. A trial judge can direct a verdict for defendant when plaintiff offers no evidence to establish a necessary part of his case: *Spicer v. Bonker*, 45 M. 630.

236. Where there is a total defect of evidence as to any fact essential to plaintiff's case, the case should be taken from the jury: *Mynning v. Detroit, L. & N. R. Co.*, 64 M. 98.

237. Where all the material facts are undisputed, and plaintiff has failed to make out a case, the court should direct a verdict for defendant: *McGrath v. Detroit, M. & M. R. Co.*, 57 M. 555; *Dondero v. Frumveller*, 61 M. 440.

238. Where the plaintiff on the stand as a witness states his case so as to show he has no cause of action, and there is no attempt at a qualifying explanation by other witnesses, he has no ground of complaint if the court charge the jury that no recovery is justifiable: *Davis v. Detroit & M. R. Co.*, 20 M. 105.

239. An instruction to find for defendant is not ground for complaint where the evidence on any point essential to recovery is open to only one meaning and that is plainly adverse to plaintiff: *Kelly v. Hendrie*, 26 M. 255.

240. A case must be absolutely free from conflict before it can be taken from the jury: *Marcott v. Marquette, H. & O. R. Co.*, 47 M. 1.

241. A case can be taken from the jury on the facts only when it is susceptible of but one just opinion: *Teipel v. Hilsendegen*, 44 M. 461.

242. A trial judge should never take a case from the jury on the evidence unless it is very clear; and when he does so he should specify the particular ground or grounds of his ruling: *Demill v. Moffat*, 45 M. 410.

243. It is only where there is no evidence upon some material point in plaintiff's case that the court can take the case from the jury: *Goodale v. Portage Lake Bridge Co.*, 55 M. 418; *People v. Eaton*, 59 M. 559; *Carver v. Detroit & S. P. R. Co.*, 61 M. 584.

244. A case cannot be taken from the jury unless it is plain, upon the strongest showing made by any of the witnesses, that there is no cause of action: *Marcott v. Marquette, H. & O. R. Co.*, 47 M. 1.

245. Where there is any evidence to sustain plaintiff's case the case should not be taken from the jury: *Stockham v. Cheney*, 62 M. 10.

246. Where the evidence has a legal tendency to make out a proper case in all its parts, its weight and sufficiency, however slight, is a question for the jury alone: *Conely v. McDonald*, 40 M. 150.

247. A verdict should not be directed for defendant where the main question is one of

fact and plaintiff has introduced evidence tending to maintain his side: *Hart Manuf. Co. v. Mann's Boudoir Car Co.*, 65 M. 564.

248. Where there is some evidence tending to sustain plaintiff's theory the case is one for the jury: *Charon v. Roby Lumber Co.*, 66 M. 68.

249. Where there is evidence, though contradicted, from which a promise on defendant's part to pay for services rendered him can be implied, the question is for the jury: *Strong v. Saunders*, 15 M. 339.

250. A case ought not to be taken from the jury where, if the testimony that makes for plaintiff is to be believed, defendant is liable: *Alexander v. Big Rapids*, 70 M. 224 (May 11, '88).

251. A verdict should not be directed for defendant unless all the testimony in plaintiff's favor, from his own or defendant's witnesses, bearing upon the issues, if accepted as true and given the most favorable construction, fails to make out a *prima facie* case: *Gibbons v. Farwell*, 63 M. 344.

252. Where there is some testimony in a case from which inferences may be drawn proper to charge defendant, the court should not direct a verdict for him: *Weyburn v. Kipp's Estate*, 63 M. 79.

253. In determining whether a case has been properly taken from the jury, such evidence as has been disregarded must be assumed to be true: *Scandinavian Society v. Eggan*, 59 M. 65.

254. In determining whether the evidence has any tendency to support plaintiff's case, the testimony given by him must be taken as true: *Sheldon v. Flint & P. M. R. Co.*, 59 M. 173.

255. In deciding whether a case should go to the jury, plaintiff has a right to have his own side of the controversy assumed to be true, and it cannot be affected by the counterproofs: *Strand v. Chicago & W. M. R. Co.*, 64 M. 216.

256. If plaintiff's testimony establishes a case, it cannot be taken from the jury by reason of testimony introduced for the defence: *Doyle v. Mizner*, 40 M. 161.

257. The testimony given on defendant's part cannot be considered in determining whether plaintiff is entitled to go to the jury upon the case made by him: *Guggenheim v. Lake Shore & M. S. R. Co.*, 66 M. 150 (June 9, '87).

258. A mere *scintilla* of evidence does not give the case to the jury: *Conely v. McDonald*, 40 M. 150; *Rosie v. Willard*, 44 M. 383.

259. An action for causing worthless paper

to be sold to plaintiff should not be taken from the jury if there is evidence that defendant suggested and was concerned in getting up the paper; that he purposed using it to get money; that he let the person who made the sale have it, without consideration, in order to trade it off, and that he expected part of the proceeds: *Adams v. Bowman*, 51 M. 189.

260. A charge to the jury in an ejectment suit "that the plaintiffs cannot recover in the action because the evidence does not show any right to recover the possession of any share, interest or portion of the premises, at the commencement of the suit," takes the whole case away from the jury, and can only be sustained where there is no evidence whatever tending to make out a case for plaintiffs: *Dubois v. Campau*, 24 M. 360.

261. A man sued another for the value of a beer-wagon, which plaintiff claimed to own, but which defendant had bought from plaintiff's step-father. The evidence tended to show that the seller was the original owner, but that the plaintiff had authorized his mother to use his money in buying it from a man who had bought it on a foreclosure against the step-father. The purchaser had also been garnished by a creditor of the step-father and compelled to pay him all that remained of the purchase price. *Held*, that the case was for the jury, and that plaintiff was entitled to have their judgment on his presentation: *Bider v. Kern*, 46 M. 455.

262. Where the elements of an alleged estoppel relied upon as a defence in trover are neither admitted nor conclusively ascertained, and there is evidence tending to show plaintiff's ownership, the case is one for the jury under proper instruction, and should not be taken from them: *Ashman v. Epsteine*, 50 M. 360.

263. It is not open to a defendant to claim that a point essential to the case against him was not made out where he himself supplied the omission in making his defence: *Green v. Gill*, 47 M. 86.

264. Conflicting evidence must go to the jury where a finding upon it is possible in law: *Maas v. White*, 37 M. 126.

265. It is error for the court to direct a verdict upon a point where the testimony conflicts: *Buhl Iron Works v. Teuton*, 67 M. 623 (Jan. 5, '88).

266. Where the vendee in a land contract sued to recover back the purchase money paid to his vendor, who had conveyed the lands to another, a conflict of evidence arose as to whether this conveyance was by the consent of such vendee. *Held* error to take the ques-

tion away from the jury and to direct them to find for the defendant: *Atkinson v. Scott*, 36 M. 19.

267. A trial judge cannot deprive the jury of its right of judgment, even though the evidence submitted is positive and in part contradicted. But if the jury returns a perverse verdict he may set it aside and order a new trial: *Woodin v. Durfee*, 46 M. 424.

268. A jury are properly instructed to find for plaintiff if his claim is supported by undisputed testimony which they believe: *Rasch v. Bissell*, 52 M. 456.

269. In an action for an assault, an instruction that, if the jury believed plaintiff's statements after considering defendant's denial and all other evidence, verdict should be for plaintiff, is not objectionable as taking from the jury the consideration of all other questions except the truth of plaintiff's statements; especially where the court, in immediate connection with such instruction, called attention to the entire evidence: *Schenk v. Dunkelow*, 70 M. 89.

270. A trial judge has a right to direct the jury's attention to any essential point in the case which he thinks the plaintiff has given no evidence fairly tending to prove; and he may advise them to render verdict accordingly: *Demill v. Moffat*, 45 M. 410.

271. In a case proper for the jury, the court offered to direct a verdict for defendant, but the offer was not accepted, and the case went to the jury, who found for defendant; the court's offer was *held* error: *Wright v. Towle*, 67 M. 255.

272. A jury, after being out for one day, sent word to the judge that they could not agree. The judge sent back word that he did not believe it yet, and added the suggestion that they had better agree that night, as he was going away and should not be back until the second day after, and they might not get discharged until he returned. The verdict was returned within an hour afterwards. *Held*, that it must be set aside as obtained by duress: *Pierce v. Pierce*, 38 M. 412.

273. After the jury had retired they returned into court and informed the judge that they had not agreed, but "stood eleven to one, and divided on \$200." He thereupon told them, "If that is the only difference, it would be better for the county and the parties on both sides that one or both sides yield so as to come together. It would be unfortunate for all to have a disagreement when the difference is so small." *Held* to be error: *Goodsell v. Seeley*, 46 M. 623.

274. A jury, after being out five hours, re-

ported that they could not agree upon a verdict. *Held*, that instructions on their duty to reconcile their views and reach a verdict if consistent with their consciences, rather than that the parties should be put to the trouble and expense of trying the case again, were not erroneous if nothing was said to the prejudice of either party: *Pierce v. Rehfsuss*, 85 M. 54.

(f) *Nonsuit.*

275. The court cannot compel a plaintiff to become nonsuit. He has always a right, if he chooses, to go to the jury with his case: *Cahill v. Kalamazoo Mut. Ins. Co.*, 2 D. 124.

276. A defendant asking for judgment in case of nonsuit must make out a complete case within the reason on which his application rests and in strict conformity to the rules and practice of the court: *Hill v. Webber*, 50 M. 142.

277. A motion for judgment as in case of nonsuit is a special motion, and must be founded upon affidavit showing the facts necessary to entitle the party to it: *Storey v. Child*, 2 M. 107.

278. A motion for judgment as in case of nonsuit on plaintiff's neglect to bring on the cause at either of the first two terms following joinder of issue is premature if made before the second term has opened: *Hill v. Webber*, 50 M. 142.

279. Nonsuit cannot be ordered for failure to file a bill of particulars in an action for slander where the affidavits holding defendant to bail fully set out the facts: *Gibbs v. Superior Court Judge*, 53 M. 496.

280. Whether nonsuit can be taken after set-off has been pleaded and defendant has claimed judgment for a balance, *quere*. Order permitting it affirmed by equal division: *Canada Merchants' Bank v. Schulenberg*, 54 M. 49. (Act 123 of 1885 now forbids such nonsuit unless defendant consents.)

281. Where, on motion to set aside a nonsuit, an order has been granted that the nonsuit be set aside on payment of costs, and the defendants, before the costs had been paid, noticed the cause for trial, this would operate as a waiver of the nonsuit and authorize the plaintiff to proceed to trial on such notice; but if plaintiff was in doubt concerning the waiver and disputed the right to have the case placed on the trial docket, knowing it was placed there, he should have moved to strike it off, and, failing in this, the court was justified in considering the case as standing regularly for trial and in ordering a second nonsuit: *Wine-man v. Wayne Circuit Judge*, 35 M. 498.

282. A vacated nonsuit leaves the entire case open for hearing: *Johnson v. Shepard*, 85 M. 115.

283. A reinstated cause standing for trial is subject to the same rules as any other; and where the failure to have the party in the court when called arose out of a misapprehension, a motion to open a nonsuit should not be disallowed on grounds relating rather to public convenience than to the mutual rights of the parties: *Lindsay v. Wayne Circuit Judges*, 63 M. 735.

284. Setting aside a nonsuit is discretionary with the court: *Hoffman v. St. Clair Circuit Judge*, 37 M. 131.

285. A nonsuit was set aside on condition of payment of costs by the plaintiff. Afterwards defendants stipulated in writing, unconditionally, to try the cause on a certain day. *Held* to be a waiver of the prior payment of costs: *Higley v. Lant*, 3 M. 612.

(g) *New trial.*

In ejectment, see EJECTMENT, IX.

When ordered on reversal, see ERROR, §§ 702-717; CRIMES, §§ 1284-1289.

When new trial in actions at law granted by chancery, see EQUITY, §§ 520-522.

286. H. S. § 7613, allowing the successor of a trial judge to settle a bill of exceptions on the stenographer's minutes, did not deprive a party of the right to a new trial which had become fixed by the judge's death before exception could be settled: *People v. Superior Court Judge*, 40 M. 680; *Stebbins v. Field*, 41 M. 373.

287. Courts of record are vested with general discretionary power on the subject of granting new trials; which power is judicial, and not arbitrary: *Loree v. Reeves*, 2 M. 133.

288. The circuit court has discretion to grant or refuse a new trial; and this discretion is not, usually, reviewable: *Dibble v. Rogers*, 2 M. 404; *Bourke v. James*, 4 M. 336; *Cuddy v. Major*, 12 M. 368; *Sleight v. Henning*, 12 M. 371; *Penn. Mining Co. v. Brady*, 14 M. 260; *People v. Branch Circuit Judge*, 17 M. 67; *Final v. Backus*, 18 M. 218; *People v. Wayne Circuit Judge*, 20 M. 220; *Johr v. People*, 26 M. 427; *Jones v. Hobson*, 37 M. 36; *Stork v. Superior Court Judge*, 41 M. 5; *Alderman v. Montcalm Circuit Judge*, 41 M. 550; *Mahoney v. People*, 43 M. 39; *Toulman v. Swain*, 47 M. 82; *Hake v. Buell*, 50 M. 89; *People v. Francis*, 52 M. 575; *Nelson v. Lumbermen's Mining Co.*, 65 M. 288; *Graham v. Myers*, 67 M. 277.

289. A motion for a new trial on the ground that one of the jurors had served upon

a former trial of the same cause, being a question addressed to the discretion of the trial court, a denial of such motion is not reviewable on error: *Bourke v. James*, 4 M. 336.

290. A motion for a new trial on the ground that the verdict is against the weight of evidence presents a question of fact alone; and such a motion, based on the ground that the verdict is against evidence, for the reason that the facts proved, or to prove which evidence was given, did not make out the crime charged, embraces both law and fact; and neither of such questions could be reserved for the opinion of the supreme court: *People v. Edwards*, 5 M. 22.

Further as to new trials in criminal cases, see CRIMES, §§ 963, 964, 983, 984, 1263-1266, 1275-1289.

291. A new trial should be granted whenever it becomes necessary for the protection of a party in his just rights, where such party clearly has merits, and has not legally waived his rights or lost them by some improper or unjustifiable laches: *Loree v. Reeves*, 2 M. 133.

292. An order by a trial judge vacating a judgment and ordering a new trial on the ground that he had, as he supposed, discovered that he had a personal interest in the case, is proper, and will not be reviewed: *Alderman v. Montcalm Circuit Judge*, 41 M. 550.

293. If a trial court thinks that a verdict is not in accordance with the evidence it can correct the jury's error by granting a new trial: *People v. Henssler*, 48 M. 49.

294. A trial judge is incompetent to decide that a verdict was not affected by outside influences to which the jury had been exposed; and if he refuses to set it aside on the ground that it was just, he usurps the functions of the jury. The presumption that the jurors were honest will not save the verdict: *Churchill v. Alpena Circuit Judge*, 56 M. 536.

295. A verdict is incurably vitiated if evidence of the public sentiment as to the case is allowed to reach the jury: *Ibid*.

296. A new trial should not be granted upon the ground of newly discovered evidence unless such evidence is very clear and satisfactory, and likely to seriously affect the result if admitted: *People v. Sackett*, 14 M. 320.

297. To entitle a party to a new trial upon the ground of newly discovered evidence he must show diligence: *Gray v. Barton*, 62 M. 186.

298. Whether a new trial may be granted in reference as in other cases, without exceptions, upon affidavits of extrinsic matter, *quere*: *Smith v. Warner*, 14 M. 152.

299. It seems that a circuit judge has

power to order a new trial after a reference, in case of new evidence, fraud or misconduct independent of the mode of trial: *People v. Wayne Circuit Judge*, 18 M. 483.

300. But the circuit court cannot order a new trial before a referee on the ground that the referee's conclusion is against the weight of evidence: *Ibid*.

301. Circuit court rule 81, requiring motions for new trial to be made in two days, was not intended to interfere with the common-law discretion of the court to entertain motions for new trials. Whether it applies to motions for new trials based on newly discovered evidence, *quere*: *People v. Wayne Circuit Judge*, 20 M. 220.

302. Motion for new trial in *quo warranto* should be made at the term at which the report is filed where there is ample time to make it before the close of the term: *Coon v. Plymouth P. R. Co.*, 32 M. 248.

303. A new trial may be granted after a trial on *quo warranto* upon the same grounds and on the same showing as in civil cases generally: *People v. Sackett*, 14 M. 243.

304. Where a new trial is not a matter of right, the judge in granting it may properly impose such a condition as that the parties must waive any supposed right of removal and try the case at the following term: *Mabley v. Superior Court Judge*, 41 M. 81.

305. A client has a right to waive the right to move for a new trial, and will be bound by such waiver unless it is invalid for some cause relating to him; no one else can set it aside: *Hackley v. Muskegon Circuit Judge*, 58 M. 454.

306. Upon each new trial the case must be tried just as if it had never been tried before. The burden of proof remains the same: *Donahue v. Klassner*, 23 M. 252.

307. A new trial is a rehearing of the cause before another jury, but with as little prejudice to either party as if it had never been heard before; and rulings made on a former trial are not binding: *Gott v. Superior Court Judge*, 42 M. 625.

308. An equitable remedy against a judgment is not lost by moving for a new trial at law: *Wright v. Hake*, 38 M. 525.

(h) Arrest of judgment.

309. On a motion in arrest of judgment only errors in substance will be considered; and such only can prevail as are not cured by verdict: *Dayton v. Williams*, 2 D. 81.

See GUARANTY, § 61.

310. The rule allowing two days after ver-

dict within which to move in arrest of judgment does not apply to criminal cases: *Cole v. People*, 37 M. 544.

IV. MOTIONS, NOTICES AND ORDERS.

311. If any part of the ground of a motion consists of facts not apparent on the face of the proceedings, an affidavit or other competent evidence of its existence must be presented: *Storey v. Child*, 2 M. 107.

312. A motion cannot properly be overruled because the grounds on which it is based are not stated, when they sufficiently appear from the record: *Shaw v. Hoffman*, 21 M. 151.

313. A court cannot dismiss a case on motion, on the ground of a former suit pending for the same cause, when a plea of such suit pending has been replied to and the issue thereon remains undisposed of: *Gruler v. McRoberts*, 48 M. 816.

314. It was error to dismiss a writ of replevin on motion based upon affidavits, on the grounds that the defendant was a deputy sheriff and the writ was directed to the sheriff and served by another deputy; that the writ was issued without authority of law, and that the service was unlawful and irregular and gave the court no jurisdiction; the questions sought to be determined were not properly triable on affidavits, but should have been in some way brought to trial on evidence upon an issue of fact. Whether they could have been tried under the general issue, or would more properly be the subject of a plea in abatement, *quere*: *Jewell v. Lamoreaux*, 30 M. 155.

315. Legal claims cannot be finally determined on motion and affidavit: *Lyon v. Smith*, 66 M. 676.

316. Generally, no matter can properly be tried upon mere affidavit, except such as depends upon the discretion of the court; and the supreme court cannot control such discretion. When an alleged compromise and payment are contested, a question is raised upon the rights of the parties which cannot properly be tried upon affidavits: *Parker v. Calhoun Circuit Judge*, 24 M. 408.

317. If the validity of a stipulation to settle a case is disputed, even though money has been paid thereunder, it should be brought into the case by plea and not by motion: *Leavitt v. Detroit Superior Court Judge*, 52 M. 595.

318. A *capias ad respondendum* cannot be set aside on a motion based on defendant's affidavit that the name by which the suit was begun was not the plaintiff's true name; the

objection, if raised at all, must be raised by plea: *Watson v. Watson*, 47 M. 427.

319. As a foreign corporation having an agent here may be held for a cause of action arising here, a motion to quash the declaration where service has been had on such an agent, and where the declaration does not negative such a cause of action, is not the proper remedy: *Maxwell v. Speed*, 60 M. 36.

320. Jurisdiction of transitory actions may be questioned and decided on motion based upon affidavits, if the facts are not of record or within judicial notice; a plea is not essential, and the party asserting the jurisdiction can waive a formal issue on the motion: *Haywood v. Johnson*, 41 M. 598; *Stringer v. Dean*, 61 M. 196.

321. A special motion to quash a writ of attachment was noticed Sept. 14 for hearing on Sept. 18. Held sufficient, unless the motion had to be heard upon an issue framed: *Stringer v. Dean*, 61 M. 196.

322. A motion to quash a writ of attachment was overruled by a justice, and defendants went to trial on the merits and suffered judgment. On appeal the circuit court reversed this judgment for matters that fell within the motion to quash, and without trying the case on the merits. Held error; the court should have tried the case on the issue of fact: *Manhard v. Schott*, 37 M. 234.

323. A motion to strike from the files is the proper proceeding to get rid of a defective demurrer; it is not good practice to move that it be not heard: *Comstock v. McEvoy*, 52 M. 324.

324. Proof of service of a motion, as for leave to appeal, must be made by copy sworn to or officially certified; an affidavit of service showing the substance or purport of the notice is insufficient: *McCaslin v. Camp*, 26 M. 390.

325. All notices in legal proceedings must be written: *Mason v. Kellogg*, 38 M. 132.

326. Notices and other papers in legal proceedings (not affidavits) are sufficiently entitled if they do not mislead: *Whipple v. Williams*, 1 M. 115.

327. An order upon motion was presumed to have been made in and not out of court, although not entered on the daily journal, where the judge appended to the motion in the motion book the certificate "Granted, B. F. G., Circuit Judge:" *Merrill v. Montgomery*, 25 M. 78.

PRINCIPAL AND AGENT.

See AGENCY.

PRINCIPAL AND SURETY.

See SURETYSHIP.

PROCEDENDO.

The writ of *procedendo* has been practically superseded for many years by that of *mandamus*: *People v. Swift*, 59 M. 529.

PROCESS.

I. REGULATION, FORM, ISSUE, ETC.

II. SERVICE.

- (a) *Time and manner.*
- (b) *Place of service.*
- (c) *Who can make.*
- (d) *Who may be served; exemptions.*

III. SERVICE ON CORPORATIONS.

- (a) *Domestic corporations.*
- (b) *Foreign corporations.*

IV. RETURN.

- (a) *In general.*
- (b) *Amendment.*

As to particular classes of process, see ASSISTANCE, WRIT OF; ATTACHMENT; CAPIAS AD RESPONDENDUM; EXECUTIONS; GARNISHMENT; HABEAS CORPUS; INJUNCTIONS; MANDAMUS; NE EXEAT; PROHIBITION; QUO WARRANTO; REPLEVIN; RESTITUTION.

As to justices' process, see JUSTICES OF THE PEACE, III, (a), (b).

As to process in chancery, see EQUITY, VIII.

I. REGULATION, FORM, ISSUE, ETC.

As to protection by process, see OFFICERS, §§ 160-193.

1. The federal government has authority to regulate and control the execution of process issuing from its own courts, irrespective of the process acts of the states: *Chamberlain v. Lyell*, 3 M. 448.

2. The act of congress of May 19, 1828 (adopting for the process of the United States courts the laws of the several states on the subject), having been made applicable to the states subsequently admitted by the act of Aug. 1, 1842, is to be construed as adopting such laws of said states on the subject as were in force at the last-mentioned date: *Gorham v. Wing*, 10 M. 486.

3. Said acts of 1828 and 1842 operate to prohibit the issue of writs of *capias ad respondendum* by the courts of the United States, except in cases where the statutes of Michigan allow imprisonment for debt: *Ward v. Cozens*, 3 M. 252.

4. As to the authority of a court to control its own process and to prevent an abuse of the same, upon motion, see *Blair v. Compton*, 83 M. 414.

5. Where the process of the court has caused an abuse, and no innocent party has obtained rights under it, the court, in setting it aside, may restore what has been wrongly seized: *Campau v. Coates*, 17 M. 235.

6. When defendant pleads to the merits the character of the process used to commence the action becomes immaterial: *Miller v. Rosier*, 81 M. 475.

7. Const., art. 6, § 85, providing that "the style of all process shall be 'In the name of the people of the state of Michigan,'" applies only to process issued by courts or judicial officers: *Tweed v. Metcalf*, 4 M. 579; *Wisner v. Davenport*, 5 M. 501.

8. An objection to a writ that it is not tested in the name of the people of the state of Michigan is not sufficient to allow the party to make the point that the style of the writ is not in the name of the people, etc. And, as the objection is purely technical, an amendment should not be allowed to rectify it to the overthrow of substantial justice: *Johnson v. Provincial Ins. Co.*, 12 M. 216.

9. Where the governor has designated the judge of one circuit to fill a vacancy in another, and has notified the clerk thereof, process should be tested in the name of the judge designated, and no acceptance by him is necessary: *Howter v. Kelly*, 23 M. 337.

10. Under R. S. 1888 a deputy county clerk was not required to sign a writ in the clerk's name. A summons signed "W. M., deputy clerk, and in the absence of the clerk," held sufficient: *Calender v. Olcott*, 1 M. 344.

11. If in a summons there is a mistake in naming the day of the week, but the day of the month is named correctly, that part of the summons may be rejected as surplusage, and the summons still be good unless the defendant has been misled by it: *Ingersoll v. Kirby*, W. 27.

12. Where a writ was tested and issued on the 7th day of February, 1867, but made returnable on Tuesday, the 2d day of April, without expressing the year, held, that it must be understood as referring to April of the then current year: *Nash v. Mallory*, 17 M. 232. s. p., *Vinton v. Mead*, 17 M. 388.

13. Where the summons described plaintiff as "Absalem Baxter" instead of "Absalom Backus," an amendment correcting the error was sustained: *Final v. Backus*, 18 M. 218.

14. The omission of plaintiffs' Christian names in a summons is not such a defect as

to destroy the process; but it is open to amendment: *Barber v. Smith*, 41 M. 188.

15. The power to cure errors and irregularities by amendment is a useful one, and when no provision to the contrary is made it applies as well to attachment suits as to others: *Ibid.*; *Drew v. Dequindre*, 2 D. 98.

16. Original writs in the circuit court may be indorsed *nunc pro tunc*, either as security for the costs or by the attorney when either indorsement has been omitted before service: *Parks v. Goodwin*, 1 D. 56.

17. Where two writs of summons were simultaneously issued in the same case by different officers, the plaintiff in error, in a record that exhibits them only as allied proceedings in one case, cannot claim that they began two distinct suits, if only one was practically instituted. And the defect in procedure is within the statute of amendments (H. S. § 7685, subd. 1): *Bogue v. Prentiss*, 47 M. 124.

18. An *alias* summons may be treated as a new writ for a new suit if the first suit has gone down; it is not void merely because the return to the original summons did not furnish a proper basis for it: *Axtell v. Gibbs*, 52 M. 639.

19. Although the commencement of a suit by filing declaration, entering rule to plead and serving copy with notice is statutory, and must conform to the statute, yet it stands on no different footing from other process: *Granger v. Superior Court Judge*, 44 M. 384.

20. In suits by declaration against joint defendants the rule to plead must be entered against all; and the filing of declaration, entry of rule to plead and service on any defendant puts the case on the footing of an issue of any other joint process served on a defendant: *Ralston v. Chapin*, 49 M. 274.

21. Entry by clerical error of a ten-day rule to [plead held corrected by a notice indorsed on the declaration of a twenty-day rule: *Howe v. Maltz*, 35 M. 500.

22. Service of declaration being a substitute for process, service before filing is void, and the proceedings cannot be amended so as to save the jurisdiction: *Ellis v. Fletcher*, 40 M. 321; *South Bend Chilled Plow Co. v. Manahan*, 62 M. 143.

23. The rule to plead should be entered before service of a copy of the declaration, but when both acts are done on the same day and within a short time, and the defendant is not misled by the omission to enter the rule until after service, he has no right to have the declaration stricken from the files: *Blanck v. Ingham Circuit Judge*, 44 M. 98.

II. SERVICE.

(a) Time and manner.

24. Where a statute requires that process shall be served a certain number of days before the return day, both the day of service and the day of return must be excluded in computing the time: *Dousman v. O'Malley*, 1 D. 450.

25. Jurisdiction of a personal action begun by summons against an absent defendant cannot rest upon a service made only by copy at defendant's last place of residence several days before the return day or an adjourned day: *Iron Cliffs Co. v. Lahais*, 52 M. 394.

26. The omission to serve notice of rule to plead with the declaration is an irregularity for which the proceedings will be set aside at any time. The defendant waives no rights by failing to notice the defect within any specific time, for he has no notice of the purpose for which the declaration is served: *Turrill v. Walker*, 4 M. 177.

27. Where distinct portions of the same building are used for a store and dwelling, the rule that an officer, in serving process, must not force the outer door of respondent's dwelling applies only to the outer door of that part of the building which is occupied by the family for domestic purposes; and if the building has a common entrance, it applies to the inside door which separates the dwelling from the rest of the interior: *Stearns v. Vincent*, 50 M. 209.

28. A householder waives his right to close the outer door against an officer serving process, by allowing him to enter; and if the officer once gains entrance through the outer door without force or fraud the privilege is gone, and he can force any other door open if necessary to make complete service of his process: *Ibid.*

29. Service of process by merely laying it on the body of a man too sick to understand it is invalid: *Midler v. Superior Court Judge*, 38 M. 810.

As to what is sufficient service to sustain charge of abuse of process, see ATTACHMENT, § 241.

(b) Place of service.

30. Service of process from the circuit court can only be made in the county in which the court is held, except in cases where the statute otherwise prescribes: *Turrill v. Walker*, 4 M. 177.

31. Process from the superior court of De-

troit cannot be served outside of the county: *Dewey v. Central Car & Manuf. Co.*, 48 M. 399.

32. Prior to the amendment of 1873 to H. S. § 7316, all persons authorized by law to be joined as defendants—*e. g.*, the maker and indorsers of a note—were joint defendants within the meaning of that section, and service having been made against one in the county where suit was begun, the others could be served in another county: *Hosie v. Wayne Circuit Judge*, 22 M. 498.

33. Service cannot be made upon a joint defendant out of the county, under H. S. § 7316, until service has been made and proved on one or more of the defendants within the county: *Denison v. Smith*, 38 M. 155; *Clark v. Lichtenberg*, 38 M. 307.

34. Service on a joint defendant beyond the jurisdiction was held valid where the return showed that service on the other defendants was made earlier and that the service beyond the jurisdiction was made on the date of the return: *Munn v. Haynes*, 46 M. 140.

35. Where service on defendants within the jurisdiction must be proved before service is made on a joint defendant outside of it, but is not shown by the return, an amended return not filed until after all have been served, but showing that service was made on resident defendants first, is not important: *Ibid.*

36. Writs of *scire facias* under H. S. § 7786 cannot be issued to other counties than that in which the court sits; H. S. § 7316, for serving original process in other counties, does not apply: *Burt v. Jackson Circuit Judge*, 85 M. 238.

37. Process under the water-craft law can be served outside of the county but not away from the water outside: *Baker v. Casey*, 19 M. 230.

(c) Who can make service.

38. Service of declaration beginning suit may be made by the sheriff: *Norvell v. McHenry*, 1 M. 227.

39. A constable did not acquire authority to execute writs directed to the sheriff in consequence of being in attendance upon a session of the circuit court in the discharge of his duties under H. S. § 766: *People v. Moore*, 2 D. 1.

40. Service of a declaration beyond the jurisdiction may be made by private persons: *Munn v. Haynes*, 46 M. 140.

41. A party to a suit cannot serve the summons therein himself: *Bush v. Meacham*, 58 M. 574.

42. Service of summons in garnishment should be made by an officer authorized to serve process or by some person deputed to make the particular service: *Johnson v. Delbridge*, 85 M. 487.

As to who may serve justice's summons, see JUSTICES OF THE PEACE, §§ 86-92.

(d) Who may be served; exemptions.

43. Summons may be served personally upon an insane person under guardianship: *Ingersoll v. Harrison*, 48 M. 284.

44. There is no general exemption from the service of process without arrest merely because the party is attending court awaiting the trial of a cause: *Case v. Rorabacher*, 15 M. 537.

45. Privilege from arrest while going to or from court exists in the case of all proceedings of a judicial nature whether in court or not, and protects a person going to or from a place of confinement under a former arrest: *Watson v. Superior Court Judge*, 40 M. 729.

46. A person arrested on the civil process of a federal court was taken to the place of holding court, and being thus brought within the jurisdiction of a local court was arrested on civil process issuing therefrom, after he had been released from the first arrest, but before he could leave the place. Held, that he was entitled to be discharged: *Ibid.*

47. When a defendant is arrested on criminal warrant in one county and taken into another where he gives bail, he cannot *there* be arrested on a civil warrant for the same matter at the suit of the prosecutor: *Baldwin v. Branch Circuit Judge*, 48 M. 525.

48. Service of summons upon one who at the time is within the jurisdiction for the sole purpose of attending as a necessary witness in other cases may be set aside: *Mitchell v. Huron Circuit Judge*, 53 M. 541.

III. SERVICE ON CORPORATIONS.

(a) Domestic corporations.

49. Where a charter does not require an officer to reside in the county where the corporate business is done, and does require him to reside in the state, an affidavit that none of the officers named in the statute, on whom service could be made, reside in the county, will not be sufficient, without further proofs to justify the inference that they cannot be found in the state. It should appear that inquiries had been made in such a way as to be likely to elicit the truth. H. S. § 8187 con-

templates some diligence in searching for the persons to be served, after, and not before, suit is brought: *Merrill v. Montgomery*, 25 M. 78.

50. Where the affidavit of service upon an officer, as representing a corporation, simply says that the person named was formerly the acting president, "and the only president thereof, to the knowledge or belief of this deponent," and it does not appear what means of knowledge the deponent had, there is no sufficient proof of regular service. Where an officer makes a return he assumes the responsibility of identifying the party served: *Ibid.*

51. In an action against a private domestic corporation there can be no substituted service under H. S. § 8137 for want of finding the officers designated by statute, except in the county where the corporation's business office is situated: *Detroit F. & M. Ins. Co. v. Saginaw Circuit Judge*, 28 M. 492.

52. Under H. S. § 4021 service of process on a manufacturing corporation cannot be made outside of the county where its business office is fixed: *Dewey v. Central Car & Manuf. Co.*, 42 M. 899.

53. Act 207 of 1885, amending H. S. § 8147, provides that process, etc., against any railroad company may be served "upon any station agent or ticket agent at any station," etc. Held, that service upon a "commercial agent" is bad: *Detroit v. Wabash, St. L. & P. R. Co.*, 68 M. 712.

54. Service on the attorney of a railroad company in proceedings to open a street across its premises is not authorized: *Detroit, M. & T. R. Co. v. Detroit*, 49 M. 47.

55. The "general or special agent" of a corporation upon whom a summons in garnishment may be served is an agent having a general or special controlling authority, either generally or in respect to some particular department of business: *Lake Shore & M. S. R. Co. v. Hunt*, 39 M. 469.

56. Justices' process against railroad companies may be served upon conductors, etc.; H. S. § 8147 is not repealed as to justices' courts by H. S. § 6862: *Fowler v. Detroit & M. R. Co.*, 7 M. 79.

57. Substituted service may be made upon corporations not acting, as well as upon those acting. The inability to find the last officers of corporations that have ceased to do business authorizes the same proceedings to obtain service as in case of inability to find the proper actual officers in active corporations: *Merrill v. Montgomery*, 25 M. 78.

58. Process against a township cannot be

served upon its supervisor outside of the county: *Pack v. Greenbush*, 62 M. 122.

Service of notice, see *APPEAL*, § 364.

(b) *Foreign corporations.*

59. A state may impose as a condition upon which a foreign corporation shall be permitted to do business within the state that it shall stipulate that, in any litigation arising out of its transactions in the state, it will accept as sufficient the service of process on its agents or persons specially designated: *St. Clair v. Cox*, 106 U. S. 350.

60. The transaction of business by a corporation in the state appearing, a certificate of service by the proper officer on a person who is its agent there is sufficient *prima facie* evidence that the agent represented the corporation in the business. But when the record is offered as evidence in another state, it may be shown that the agent stood in no such representative character to the corporation as would justify service upon him: *Ibid.*

61. Service of process on the agents of a corporation in another state for matters within the sphere of their agency is, in effect, service on the corporation itself, as much as if such agents resided in the state where the corporation was created: *Ibid.*

62. Service of summons against a foreign corporation, on the secretary, is irregular and unauthorized. Our statutes providing for service of process on various named corporation officers do not apply to foreign corporations. Except in cases where special provision has been made otherwise, the remedy as to foreign corporations must be sought as at common law: *Watson v. Wayne Circuit Judge*, 24 M. 38.

63. The service of process on an officer of a foreign corporation casually within the state but not on the business of the corporation, and not authorized by the corporation to receive such service, is not a good service: *Newell v. Great Western R. Co.*, 19 M. 336.

64. The officer or agent of a foreign corporation served within this state under H. S. § 8145 need not be here upon official business for his corporation, or be specially authorized for such service: *Shickle, etc. Iron Co. v. Wiley Construction Co.*, 61 M. 226.

65. There is no exception to the mode of service provided in H. S. § 4367 against foreign insurance companies. It applies to all cases of suits against them: *Hartford Fire Ins. Co. v. Owen*, 30 M. 441.

66. The provision of H. S. §§ 4362-4368, authorizing service of process against foreign insurance companies by delivery to the commissioner of insurance, who is required to send

duplicates to the company or its agents within the state, does not apply to any but courts of record: *Ibid.*

67. The general or special agent in Michigan of a foreign insurance corporation is the proper person to be served with a summons in garnishment against it, and to make answer: *Lorman v. Phoenix Ins. Co.*, 33 M. 65.

68. An attorney appointed by a foreign corporation to receive service of process in "action upon any liability or indebtedness incurred or contracted" by the company (H. S. § 3723) cannot be served with notice of garnishment proceedings: *Moore v. Wayne Circuit Judge*, 55 M. 84.

69. Prior to the amendment in 1881 of C. L. 1871, § 1624 (see H. S. § 8723), service upon a foreign express company could not be made upon its "agent," but had to be upon a person authorized by power of attorney to receive it: *American Express Co. v. Conant*, 45 M. 642.

IV. RETURN.

(a) *In general.*

70. A return of service should always inform the court that lawful service has been made: *Town v. Tabor*, 34 M. 262.

71. A certificate of service with the venue laid in the county of Wayne and city of Detroit, and signed simply "John B. Kendall, Sheriff," without specifying of what county, and certifying to a personal service upon defendants named, on a day specified, "in said county of St. Clair," is not sufficient proof of service: *Clark v. Lichtenberg*, 33 M. 307.

72. A constable's return to a writ of attachment, reciting that he had "personally attempted to serve the within attachment on the defendant by reading the same and offering a copy to him at the house of Daniel Dean, but he ran away. I could not deliver a copy to him," is not valid as a return of personal service; it does not show that the officer was actually in the presence or hearing of the defendant, or that the defendant knew that he had a writ against him, or that his flight had any connection with the suit: *Holden v. Ranney*, 45 M. 399.

73. The return of service indorsed upon a declaration recited that the sheriff "served the declaration of which the within is a true copy" . . . by delivering, etc., "a true copy thereof, and of the foregoing complaint and the notice relating thereto." *Held*, that the use of the word "complaint" was an immaterial error, and did not affect the showing of due service: *Hammond v. Baker*, 39 M. 472.

74. The sheriff certified "that on the 9th day of Sept., 1876, he served the declaration of which the within is a copy on John O. Hammond, and on the 11th day of Sept., 1876, he served on the defendant, Erastus L. Hammond, . . . by delivering to said defendant," etc. *Held* that, as the entire return clearly showed that service was made on both defendants, the omission to add the letter "s" to the word "defendant" did not fatally affect it: *Ibid.*

75. The sheriff's certificate of service in a suit begun in the superior court of Detroit stated that he served the declaration "on Edward A. Elliott in the city of Detroit, the defendant named in said declaration, by delivering to him in said county of Wayne a true copy thereof." *Held* sufficient, as the city is within the county. Judgment would not be reversed for the irregularity in form (H. S. § 7635, subd. 13): *Elliott v. Preston*, 44 M. 189.

76. The return of a service of summons in replevin "by delivering a certified copy of said writ to his wife personally," it not appearing that defendant could not be found and that the service was at his dwelling, is bad: *Wheeler v. Wilkins*, 19 M. 78.

77. Where a notice was attached to a declaration that a note, a copy of which was given, would be read in evidence under the declaration, and the sheriff returned that he had served on the defendant a copy of the declaration and notice, it was *held* that the return necessarily implied service of a copy of the note, since that constituted an essential part of the notice: *Bliss v. Paine*, 11 M. 93.

78. Where the suit is commenced by declaration, the certificate of service may be indorsed on the original declaration on file, or on a copy: *Larned v. Wilcox*, 4 M. 338.

79. Where there is more than one defendant, a return that the sheriff cannot find the defendants is equivalent to saying that neither can be found: *Hitchcock v. Hahn*, 60 M. 459.

80. The city marshal of Manistee has no authority to serve process outside of the city. *Held*, that his return to a writ of attachment issued by a justice would not confer jurisdiction to proceed, if it did not show affirmatively that it was served within the city: *Alverson v. Dennison*, 40 M. 179.

81. It seems that, where a sheriff's return of personal service of a declaration commencing suit does not state the place of service, the presumption is that he discharged his duty by serving within the county: *Norvell v. McHenry*, 1 M. 227.

82. Where an affidavit of service of decla-

ration states that service was made "on the 26th day of June, last past," the jurat, showing that the affidavit was made July 31, 1844, may be resorted to to show the time of service: *Ibid.*

83. A return of service signed by the under-sheriff in his own name is good: *Calender v. Olcott*, 1 M. 344; *Allen v. Hazen*, 26 M. 142.

84. Even if the under-sheriff did not have power to sign a return in his own name, yet when the writ appears from the return to have been served by the proper officer the return is amendable, and a judgment will not be reversed because of the defect: *Calender v. Olcott*, 1 M. 344.

85. A return to a writ may be signed by a deputy-sheriff in his own name: *Wheeler v. Wilkins*, 19 M. 78.

86. Proof of service of a notice that is equivalent to process should be made by copy sworn to or officially certified; an affidavit of service showing the substance or purport of the notice is not sufficient: *McCaslin v. Camp*, 26 M. 390.

87. Where service is to be made by mail, if it does not appear that the conditions existed on which its validity must depend, the proof of service is, as a general rule, insufficient: *Clark v. Adams*, 33 M. 159.

88. An indorsement of acceptance of service on behalf of a foreign corporation by parties who therein describe themselves as agents of the corporation has no legal force by itself as evidence of the fact of such agency, or as proof of such service as the law contemplates: *Hebel v. Amazon Ins. Co.*, 33 M. 400.

89. The objection that the jurat in the proof of service is defective is one that should be made in the trial court; otherwise it will not be heard on appeal unless the defect has caused injustice: *Froman v. Froman*, 53 M. 581.

90. The return of a ministerial officer of personal service is unimpeachable: *Facey v. Fuller*, 13 M. 527.

91. The return, by an officer, of service of process is conclusive, in any collateral proceeding, upon the parties to the suit in which the process issued: *Michels v. Stork*, 52 M. 260.

92. A sheriff's return to a writ of replevin may be amended on due notice and proper showing, but if not amended is conclusive as made: *Green v. Kindy*, 43 M. 279.

93. An officer's return of service of process may, under certain circumstances, be set aside upon sufficient cause shown in the same proceeding; but where it shows the service to have been legal and proper, though false, it gives jurisdiction: *Low v. Mills*, 61 M. 35.

(b) *Amendment.*

94. The statute of amendments (H. S. § 7635, subd. 2) covers only formal defects, and those by which neither party shall have been prejudiced; it does not reach jurisdictional defects: *Denison v. Smith*, 33 M. 155.

95. A return to a municipal court declaring that service had been made in the county was held to mean in the county outside of the municipality, and was therefore full and conclusive as to that territory. A subsequent *ex parte* amendment to show that service had been made in the municipality also could not affect a joint defendant outside of the municipal jurisdiction. He was not bound to watch the records after the former return had been made: *Ibid.*

96. Whether a return on which the jurisdiction over property depends can be amended after discontinuance of suit, *quere*: *Haynes v. Knowles*, 36 M. 407.

97. Where it is sought to amend the proof of service of process in order to show jurisdiction, and thereby give validity to the judgment so that it may be used in another suit to sustain rights claimed under it, the party adversely interested is entitled to notice. But such amendments are not generally permitted to affect the rights which third persons may have acquired while the proceedings remained defective: *Montgomery v. Merrill*, 36 M. 97.

98. A return cannot be amended in matters affecting the jurisdiction without giving notice to the parties affected by such amendment: *Haynes v. Knowles*, 36 M. 407.

99. An officer who is sued for misconduct cannot, pending the trial, manufacture evidence for himself by an *ex parte* amendment of his return curing the official action which is the basis of the suit against him: *Ibid.*

100. As a general rule, in all cases where the defect or mistake is owing to the default of any clerk or officer of the court, an amendment will be allowed: *Calender v. Olcott*, 1 M. 344.

101. A sheriff's return never becomes part of the record until actually on file with the clerk, and he may amend it without leave at any time before filing: *Watson v. Toms*, 43 M. 561.

102. Where a motion is made to open a final judgment obtained by default, the circuit court has power to allow a sheriff to amend his return of service of a declaration by showing that a copy of a note appended thereto was also appended to the copy which he served: *Wilcox v. Sweet*, 24 M. 355.

103. It seems to be within the discretion of

a judge, in trying an action upon a recognition of special bail, to permit the sheriff to amend his return to a *capias* in the original suit by adding the date: *Heymes v. Champlin*, 52 M. 26.

104. The date of the constable's return to a writ of attachment may be amended by changing it according to the fact: *Kidd v. Dougherty*, 59 M. 240.

105. A constable's omission to date his return is merely clerical, and should be disregarded where the justice's return to a *certiorari* states that the return to the attachment was not actually made or the writ returned to him until the return day mentioned therein: *Nicolls v. Lawrence*, 30 M. 395.

106. Where a judgment, taken by default on a service of a declaration by a deputy-sheriff, is offered in evidence in another cause and objected to on the ground that the certificate of service does not show that any copy of rule to plead was served with the declaration, it is error to permit the person who made such service to amend his return without any affidavit or other showing, and after ceasing to be deputy-sheriff, so as to make it show that a copy of rule to plead was indorsed on the copy of the declaration so served by him. Such amended certificate did not constitute any official return of the service of rule to plead, upon which there could be legal liability. A proof of service by affidavit should have been required instead of such amendment: *Arnold v. Nye*, 23 M. 286.

107. Proceedings in justice's court to amend the return of service of an attachment after judgment were quashed on *certiorari* where notice thereof had not been duly served, and the amendment consisted in changing the name of the person on whom the writ had been served, and against whom judgment was rendered: *Clark v. McGregor*, 55 M. 412.

PROHIBITION.

1. A writ of prohibition is a common-law preventive against the encroachment, excess or improper assumption of jurisdiction, and can only be resorted to in clear cases and where other remedies are ineffectual. It may lie at the suit of one or more parties on either side to restrain the action of the court so far as it exceeds its jurisdiction and thereby affects the petitioner; but it is a discretionary writ, and will not be granted unless it appears that the petitioner has vainly applied for relief to the court against which he wishes it to issue: *Hudson v. Superior Court Judge*, 42 M. 239.

2. The writ cannot be issued to restrain any action of inferior courts which can be reviewed by any of the ordinary methods: *People v. Wayne Circuit Court*, 11 M. 393.

3. The writ is proper to restrain action by an inferior court clearly in excess of jurisdiction: *Scott v. Chambers*, 62 M. 532.

4. The writ issues to stay proceedings begun in one court to cancel a judgment entered by a competent court of co-ordinate jurisdiction: *Maclean v. Wayne Circuit Judge*, 52 M. 258.

5. Or to restrain a court of equity from proceeding with the exercise of power conferred upon it by an invalid act: *Houseman v. Kent Circuit Judge*, 58 M. 364.

6. The writ granted to restrain a circuit judge from entertaining garnishment proceedings where no jurisdiction had been gained over the principal defendant: *McCloskey v. Wayne Circuit Judge*, 26 M. 100.

7. An assignee in bankruptcy may be entitled to this writ to restrain a state court from enjoining his proceedings in the bankrupt court to quiet his title to goods turned over to him by the marshal as assets of the bankrupt's estate: *Hudson v. Superior Court Judge*, 42 M. 239.

PUBLIC LANDS.

I. SURVEYS.

II. DISPOSAL OF LANDS.

(a) *By entry, patent, etc.*

1. General power.
2. Powers of land board; conveyances by.
3. Town-site claims.
4. Pre-emption claims; homestead entries; location under warrant.
5. Purchase and sale.
6. Patents.

(b) *By legislative grant.*

III. SWAMP-LAND GRANT.

IV. GRANTS TO CANALS AND RAILROADS.

V. INDIAN LANDS.

VI. SCHOOL LANDS.

VII. AGRICULTURAL COLLEGE LANDS.

VIII. TRESPASSES ON PUBLIC LANDS.

I. SURVEYS.

1. All subdivision lines of a section of land according to government survey must run straight from a point in one exterior line of the section to the corresponding point in the opposite boundary: *Wilson v. Hoffman*, 54 M. 246.

2. In government surveys, lines actually

run and marked on the ground prevail over any theoretical or paper platting, and small excesses or diminutions are disregarded: *Sandborn v. Vance*, 69 M. 224.

3. "Quarter-posts" fixed by the original United States surveys are to be accepted as fixed and established monuments, controlling courses and distances, and not liable to be changed for errors in the surveys: *Britton v. Ferry*, 14 M. 53.

4. Under the acts of congress of Feb. 11, 1805, and April 24, 1820, the surveyor-general had no authority to extend a south fraction north of the east and west quarter-line of the section, and if he did so such action would be void: *Keyser v. Sutherland*, 59 M. 455.

5. The quarter-post on the east side of section 36 must be identical with that on the west side of section 31, it being a township line: *Highway Commissioner v. Beebe*, 61 M. 1.

6. The meander lines run by a government surveyor have no significance as boundaries, and are run simply to afford a means of computing the area for which the government requires payment; and where a patent calls for a fractional quarter section containing $16\frac{1}{16}$ acres on the shore of a lake, the patentee's title extends to all the land in the quarter section, and is not limited by the meander line on the lake's border: *Palmer v. Dodd*, 64 M. 474.

7. Lands constantly submerged cannot be surveyed by the commissioner of the general land office as islands omitted from former surveys, and therefore subject to sale as public lands. And a patent for such land is void: *Webber v. Pere Marquette Boom Co.*, 62 M. 626.

8. Under the act of congress of April 24, 1820, enacting that in surveying public lands fractional quarter sections containing less than 160 acres should not be subdivided but should be sold entire, the surveyor-general returned entire a parcel of 117 acres, being such part of the section as lay southeast of a meandered stream, and this was patented as "the southeast fractional quarter according to the official plat of the surveyor-general." *Held*, that the whole of this phrase constituted a part of the description of the premises conveyed, and that a declaration in ejectment describing the land claimed as "a portion of the southeast fractional quarter," etc., was good, although such portion lay outside of the line ordinarily limiting the quarter section: *Wilson v. Hoffman*, 70 M. 552.

9. And a tax-deed to the defendant in ejectment conveying the east half of an adjoining quarter was *held* to convey only that portion of such east half as lay north of the stream bounding said fractional quarter: *Ibid*.

10. Section corners and the lines connecting them fixed by the original survey cannot be changed by any later one made for the purpose of dividing the sections: *Palmer v. Giddings*, 59 M. 338.

11. The burden of proof is upon one who disputes a line run by the government surveyor: *Smith v. Rich*, 37 M. 549.

II. DISPOSAL OF.

(a) *By entry, patent, etc.*

1. General power.

12. Under § 3 of art. 4 of the federal constitution, and § 4 of the act of June 15, 1836, admitting Michigan into the Union, all powers preliminary to and connected with the sale and disposition of all vacant and unsold public lands of the United States in Michigan are vested in the federal government exclusively, until the issue of the patent consummates the sale, divests the title of the United States, and makes the land for the first time subject in all respects to the local laws of the state: *Brewer v. Kidd*, 28 M. 440.

2. Powers of land board; conveyances by.

13. Notwithstanding the previous organization of the state government, the governor and judges of the territory of Michigan remained in office and competent to execute the powers conferred upon them by the act of congress entitled "An act to provide for the adjustment of titles of land in the town of Detroit and territory of Michigan, and for other purposes," approved April 21, 1806, until July 1, 1836: *Scott v. Detroit Young Men's Society*, 1 D. 119.

14. The land board constituted by the act of congress of April 21, 1806, did not consist of two integral parts—the governor and the judges; but of four persons designated by their names of office, any three of whom were authorized to execute any of the powers conferred by the act. Therefore a deed of bargain and sale executed by the judges only is valid: *Ibid*.

15. They will all be presumed to have been present, and to have deliberated upon an act done by the majority, unless the contrary expressly appears: *Ibid*.

16. The power of the governor and judges to convey lots in the town of Detroit was not confined to a conveyance of lots in such forms and dimensions as they should delineate upon

their plan. The claims to be adjusted by them were such as any person might have, legal and equitable; and when satisfactory proof had been made, they had no right to deprive a claimant of any portion of that land actually belonging to him under the acts of congress, whether it interfered with any projected plan or not. And the courts cannot go behind their conveyances while they acted within their jurisdiction: *People v. Jones*, 6 M. 176.

17. The plan of the city of Detroit, when made, was liable to modification by interfering claims and reserves, and the land board had power to adapt it to contingencies when necessary: *Ibid*.

18. The powers conferred upon the governor and judges of Michigan territory to grant donation lots in Detroit are not to be construed with the technical strictness applicable to those of an ordinary attorney or donee of a power; but they were vested with a large discretion, and their acts are entitled to liberal intendments in their support: *Ready v. Kearsley*, 14 M. 215.

19. Until the land board has made a donation of a lot to the person entitled effectual, it cannot be said to have exhausted its powers. The mere allotment of a piece of land as a donation lot, not followed by a deed, could not confer title either legal or equitable: *Ibid*.

20. Congress having authorized the governor and judges of the territory of Michigan, for the time being, to convey certain lands, the fee of which was in the United States, and having, by acts of legislation, recognized the persons who assumed to convey such lands, by virtue of such authority, as incumbents of those offices, and the offices as being in existence at and subsequent to the time when such conveyances were made, a mere stranger will not be permitted to controvert the title under such a conveyance, on the ground that the grantors were not at the time of the grant such governor and judges, and that there were then no such offices: *Scott v. Detroit Young Men's Society*, 1 D. 119.

21. And therefore a third person is not at liberty to question the validity of a clause inserted in a deed given to the land board, by which the grantee was to hold "in trust for the rightful owners," etc.: *Ready v. Kearsley*, 14 M. 215.

22. Where a lot was conveyed by the land board to one Hall in trust for the rightful owners, "who may claim the same by mesne conveyances from the original grantee or otherwise," and there was no showing that any person other than Hall had any claim to the land, legal or equitable, at the date of the deed,

it was held that the construction of the deed must be the same as if it had been to Hall, *habendum* to the use of himself and those who should claim under him by conveyance or otherwise: *Tregent v. Whiting*, 14 M. 77.

23. A deed by the land board "in trust to and for the use and rightful benefit of the owners of the premises hereinafter mentioned, claiming the same by virtue of mesne conveyances from the original grantee or otherwise howsoever," is not void for uncertainty, and was within the powers of the land board: *Ready v. Kearsley*, 14 M. 215.

24. Where the board conveyed a lot in Detroit to A., and afterwards by mistake gave a deed of the same lot to B., and A. took possession of another lot on the supposition that it was the one granted to him, and the board afterwards, assuming that A. had lost the title to the first-mentioned lot, gave him a deed of the one of which he had taken possession, it was held that the board had not exhausted its power to grant a donation lot to A. by giving the first deed, and that the second deed to him was valid: *Ibid*.

25. The conveyance by the governor and judges of certain lands in Detroit to the trustees of the University of Michigan, held valid: *Regents v. Board of Education*, 4 M. 218.

26. No presumption can be indulged against the lawful character of the conveyances of the governor and judges: *Cicotte v. Anciaux*, 58 M. 227.

3. Town-site claims.

27. The act of congress "for the relief of citizens of towns upon the lands of the United States, under certain circumstances," approved May 28, 1844, was intended to apply exclusively to actual and existing towns, and not to such lands as may have been selected by non-resident claimants as the site for a prospective town: *Selby's Case*, 6 M. 198.

28. The act was intended for the protection of citizens of villages and cities that had grown up or might grow up on government lands, and to secure to them severally, at the minimum price, all lands actually occupied by them respectively for village or city purposes; and to them collectively, for the use of the village or city, such other lands as might be embraced in the government subdivisions within its limits: *Ibid*.

29. The rules and regulations to be prescribed by state legislation under the act are to relate to the determination of claims to possession, and the extent of possession that may fairly be considered as falling within an occu-

pancy for town purposes, as well as to the disposition of the part of the land not actually occupied for town purposes by individuals: *Ibid.*

30. The act of the legislature of Michigan relative to Ontonagon, approved Feb. 29, 1853, was held void under said act of congress: First, because undertaking to dispose of the whole trust to the person named therein, and his grantees, and authorizing no one else to be considered or receive any relief; and second, because not prescribing any rules and regulations for the execution of the trust: *Ibid.*

31. A claimant under said act of congress, whose petition shows that the land claimed had not been actually occupied at the time the state legislation designed to carry out the act was adopted, and that it was afterwards occupied only as a farm, does not come within the provisions of said act, and is entitled to no relief: *Ibid.*

32. Where land has been entered by the county judge under said act of congress, and the trustee is proceeding to adjudicate upon a claim made to a portion thereof, a person who sets up a right to such portion as a pre-emptioner for agricultural purposes, and claims that the same was never occupied for town purposes, and was not legitimately entered by the trustee, has a right to appear before the trustee and be heard: *Ibid.*

33. On the hearing by the county judge of a claim under said act of congress, a citizen and tax-payer of the town, who objects that the claimant is not entitled to the land claimed, but that it is a part of the common fund, to be disposed of for the benefit of the town, is entitled to appear and be heard: *Ibid.*

4. Pre-emption claims; homestead entries; location under warrant.

34. Until a pre-emptioner pays for his land the government may dispose of it: *Busch v. Donohue*, 31 M. 481.

35. One of foreign birth, who is otherwise duly qualified, and has in due form declared his intention of becoming a citizen, is entitled, under the pre-emption laws, to file and maintain a pre-emption claim before becoming fully naturalized: *Boyce v. Danz*, 29 M. 146.

36. The "settlement" of a pre-emptioner under the act of congress of 1841 (Brightley's Digest, p. 474, § 88) must be that of a qualified person, and one is not qualified until he has filed his pre-emption claim, and, if a foreigner, has declared his intention of becoming a citizen. The law requires the proofs and

payment within twelve months of settlement; and if the pre-emptioner has stated in his claim that he "settled and improved" the land at a date which was, in fact, earlier than his qualification, and more than twelve months before payment, he is still not estopped from afterward dating the settlement as of the time when he actually qualified: *Ibid.*

37. The action of the register and receiver of the United States land-office in accepting the proofs furnished by a pre-emptioner as satisfactory, and receiving his money and issuing to him the usual duplicate, is a judicial determination of his rights, which is conclusive in all collateral proceedings. Whether or not the commissioner of the land-office can reverse their action where there is no adverse claim under the pre-emption laws, it is held that his action in doing so, without notice to the party concerned, thus overturning a formal adjudication without the privilege of a hearing, was wrong: *Ibid.*

38. A homestead entry vests no title, but gives a right of possession which may be perfected by continued occupancy and improvement; and if not so perfected reverts to the government: *Flint & P. M. R. Co. v. Gordon*, 41 M. 420.

39. Where, under a homestead entry not made in good faith, a patent was obtained for the supposed excess above 640 acres in a tract that had been officially surveyed, and confirmed to complainant's grantors under the act of congress of April 25, 1808, and since possessed by them or complainant, held, that under said act a tract of more than 640 acres might be confirmed; that complainants were entitled to all the land within the survey lines and monuments, and that any paper descriptions contained in the patent or in plats made from the survey must yield so far as they differ: *Sanborn v. Vance*, 69 M. 224.

40. Notice to a homesteader of proceedings against him under the homestead act covers such matters only as are alleged in the complaint, and under such notice these are the only questions that can be passed on by the register of the United States land-office, or, on appeal from him, by the commissioner of the general land-office and the secretary of the interior. And if a final ruling on a point not raised by the complaint shall have the effect of ousting the homesteader, he can file a bill in equity to compel a subsequent patentee, with notice, to convey to him: *Johnson v. Lee*, 47 M. 52. (Reversed, 116 U. S. 48.)

41. While, as a general rule, in contested matters before the federal land department,

the decision should be confined to the questions raised by the allegations of the respective parties, yet if it appears that the claim of the moving party is against public policy or the law, it should be disregarded, whatever be the nature or extent of the testimony upon the point at issue: *Lee v. Johnson*, 116 U. S. 48.

42. Where, in a proceeding before the general land department involving only the question of the abandonment of a homestead entry, it appeared from the evidence returned on appeal to the secretary of the interior that the claimant was not a *bona fide* homestead claimant, the secretary did not exceed his jurisdiction in directing a cancellation of the entry: *Ibid.* (Reversing *Johnson v. Lee*, 47 M. 52.)

43. In proceedings for the alienation of public lands, the findings of the officers of the federal land department upon matters of fact must, in the absence of fraud or imposition, be taken as conclusive: *Ibid.*

44. The holder of a land warrant has an absolute right to locate land with it, and to receive a patent therefor: *Merrill v. Hartwell*, 11 M. 200.

45. Where plaintiff located land with a warrant which had been sold to him with a guaranty, and was afterwards notified from the land-office that the entry was suspended because the commissioner of pensions had cancelled the warrant on the allegation that it was issued on forged papers, and plaintiff then brought suit on the guaranty, it was held that this *ex parte* and extra-judicial proceeding of the commissioner could not conclude private rights, and that evidence of this action did not show plaintiffs entitled to recover: *Ibid.*

46. Where the commissioner of the state land-office assumed to cancel the location of lands and tendered back the warrants on which the land had been located, the act of the holder in receiving back the warrants without objection and in using them to locate other lands amounted to such an acquiescence in the cancellation as would preclude him or his assignee from thereafter relying on the original location as a step in the proceedings necessary to entitle them to a certificate of the purchase of the land first selected: *Ely v. State Land-Office Commissioner*, 49 M. 17.

5. Purchase and sale.

47. While the proceedings to a land sale by the federal government remain *in fieri*, no power outside of that of said government may

interfere with such proceedings, or adjudicate upon their validity, for the mere purpose of controlling or restraining them in relation to the subject-matter of the sale: *Brewer v. Kidd*, 23 M. 440.

48. Under the United States system of public land sales, the action of the register and receiver of a local land-office in making or refusing a sale is not conclusive upon the purchaser or the government, and the official action necessary for a completed sale must be regarded as *in fieri*, and only in process towards completion, until consummated by the issuing of a patent, which exhausts the federal government's power of sale: *Ibid.*

49. The rules adopted in the land-office relating to selections do not apply to cases under act 197 of 1883: *Webster v. Newell*, 66 M. 508 (June 28, '87).

50. The courts of the state have no authority to restrain, by injunction, the receiver and register of the United States land-office, acting under instructions of the commissioner of the land-office, from proceeding to sell, at public sale, lands of the United States for which patents have never issued, notwithstanding such lands were subject to private entry, and all the steps towards a purchase of them at private sale, except the issue of the patent, had been taken, and the purchase money paid: *Brewer v. Kidd*, 23 M. 440.

51. It is the general policy of the land laws of Michigan that there shall be no private sales of state lands until they shall have been offered at public sale: *Potter v. State Land-Office Commissioner*, 55 M. 485.

52. Act 197 of 1883, in fixing the minimum price for certain lands, does not authorize their sale, but merely prohibits sales below that price, and it presumptively means that a higher price may in some cases be demanded: *Ibid.*

53. Lands left undisposed of after public sale cannot be entered at the state land-office until the land commissioner has had an opportunity to receive and enter the returns from the public sales, and to fix the minimum price and the time for future entries. And the previous deposit of money, which the commissioner has no right to receive officially, cannot give the depositor precedence as a purchaser: *Ibid.*

54. Whether the precedence of one person over another in a simultaneous struggle to enter land at the land-office can be determined by the fact that his application is first in the hands of the official conducting the sale, *quere*: *Ibid.*

55. If the commissioner of the state land-

office receives a draft as money in payment for lands, individuals cannot treat this as no payment and demand the right to purchase the same lands afterwards—there being no showing that the draft was not as good as money: *People v. Pritchard*, 19 M. 470.

56. A person applying to purchase lands and making only part payment, where the commissioner's rule requires the whole, has no right to rely upon the assurance of a clerk in the office that such payment will secure the land for him, if on notice he should secure or pay the balance: *Ibid.*

57. After such application and payment another person applied for the same lands, tendering payment. Thereupon the first purchaser was notified that he could select of the lands so much as the money paid in by him would pay for, and he did so, claiming the whole, however, and offering to pay in full. *Held*, that the second applicant was entitled to the balance of the lands: *Ibid.*

58. Where an order headed "Michigan State Land-Office, Dec. 1, 1859," purporting to be a reservation from sale of certain lands specified, and to be signed by the commissioner of the land-office, though in the handwriting of one of the office clerks, has been pasted in that book of the office in which advertised offerings are kept, and the commissioner in his annual report for the following year officially reports said lands as reserved, it is a reasonable inference, although the commissioner's order reserving the land is not found in any other shape in the office, that the order in the clerk's handwriting is a copy of an original since lost or destroyed, and this would be sufficient evidence that this land had been withheld from sale: *Attorney-General v. Smith*, 81 M. 359.

59. Where lands subject to private entry are applied for and payment tendered, the commissioner has no authority to withhold them from sale for the accommodation of other parties who had made application previously but were not ready to make payment: *People v. Pritchard*, 17 M. 888.

60. When title to land passed from the United States to an individual, a delivery of the land certificate to a third person for that individual was held equivalent in law to a delivery to the person himself, and the fact that it was not really delivered to him by such third person was unimportant: *Weare v. Linnell*, 29 M. 224.

61. The commissioner of the state land-office has authority to replace a certificate of purchase covering several parcels of land with certificates for each, if he is satisfied that the

public trust fund will not thereby be injured. *Held*, that he is only expected to protect the state's interest; he has no concern with those of individuals, for his acts cannot determine their rights: *Allen v. Cadwell*, 55 M. 8.

62. The *bona fide* holder of a land-office certificate has an equitable interest which is subject to any priorities that may be held by a previous purchaser of the land itself: *Warner v. Hall*, 53 M. 371.

63. The holder of a part-paid land certificate mortgaged the land and then sold out and put the purchaser in possession. Afterwards he assigned the certificate to some one who advanced the money to take up the mortgage and pay the balance due the state, so as to get a patent. *Held*, that the purchaser could maintain a bill against the holder, the mortgagee and the assignee of the certificate to enjoin ejectment and for specific performances: *Rogers v. Odell*, 86 M. 411.

64. A redemption from a purchase of state forfeited land made by one claiming to hold by assignment from the original locator, and who at the time was likewise guardian of the heirs of such locator, is sufficient to cut off the purchaser's rights, though such assignment be proved to have been a forgery, since, if the assignment were invalid, the redemption may be sustained as made on behalf of the heirs: *Johnston v. Knapp*, 85 M. 307.

65. Whether a redemption when made is not sufficient, in all cases and by whomsoever made, to save the title to the real owner, whoever he may be, *quere: Ibid.*

6. Patents.

66. *Mandamus* will not lie to compel the secretary of state to issue patents to state lands; that is the governor's duty (H. S. § 5269): *Crane v. Secretary of State*, 51 M. 195.

67. When a patent has been issued, a third person, not in privity with the title, is not to be heard to allege that it has issued improvidently: *Clark v. Hall*, 19 M. 856.

68. The question whether a government patent is not void for excess is one that cannot be raised by third persons if the excess patented was public land subject to sale: *Webber v. Pere Marquette Boom Co.*, 62 M. 626.

69. One who has procured a patent having notice of another's right in the land cannot, against a bill in equity filed by the latter, raise the defence that complainant's act in quitclaiming the right to reserve the timber was a fraud on the state. The state is protected from waste by the stipulations in its certificate: *Holcomb v. Mosher*, 50 M. 252.

70. The effect of a patent issued to a claimant before commissioners under the act of congress of March 3, 1807 (relating to lands in Michigan territory), and based upon the claimant's actual possession of the premises, is to release the title of the government and to confirm that under which the claimant held; and it does not exclude the right of dower of the widow of the claimant's grantor: *May v. Specht*, 1 M. 187.

71. A patent to public lands relates back to the time when they were purchased, and gives the patentee title as of that date: *Fisher v. Hallock*, 50 M. 463.

72. One who has perfected his homestead entry is entitled to a patent which relates back to the time when the entry was made, and takes date with it; but such relation does not operate to defeat a railroad company's right of way perfected under U. S. Rev. Stat., § 2477: *Flint & P. M. R. Co. v. Gordon*, 41 M. 420.

73. The principle that a government patent when issued relates back to the original entry applies with equal force to a patent issued to the assignee of the original purchaser: *Clark v. Hall*, 19 M. 356.

74. A bill to restrain an action of ejectment was properly dismissed where plaintiff held a federal patent to the land that had been granted him on the strength of equities arising out of his having entered it thirty-one years previously and twenty-one before the defendant in the action and complainant in the bill had gone upon the land, though the latter had continued in possession in spite of notice that it was not open to entry: *Ives v. Ely*, 57 M. 569.

75. A state patent to school lands is evidence of legal title, but it cannot cut off private rights, the holders whereof may assert them in equity. But a *bona fide* purchaser or encumbrancer of the patented land will be protected: *Allen v. Cadwell*, 55 M. 8.

76. Those who have no reason to question a patentee's rights may rely on his title as valid: *Warner v. Hall*, 53 M. 372.

77. After confirmation of a claim to land by the board of land commissioners under the act of congress of May 11, 1820, and after patent issued, if it be competent for a court of equity to go behind a patent to settle conflicting claims, it should only be done upon the clearest and most irrefragable proofs: *Bernard v. Bougard's Heirs*, H. 130.

78. A patent of lands from the United States or the state cannot be impeached in an action at law: *Bruckner's Lessee v. Lawrence*, 1 D. 19; *Romain v. Lewis*, 39 M. 233; *Carpen-*

ter v. Ingersoll, 43 M. 433. Otherwise, where there was no jurisdiction to issue it: *Webber v. Pere Marquette Boom Co.*, 62 M. 626.

79. A land patent from the state is presumed valid, except as against such persons as are distinctly authorized to assail it, unless the state itself brings proceedings to avoid it; and if the state has confirmed by a patent a settler's license which it issued previously, all inquiry into the facts of settlement and occupancy is precluded thereby except by those who have the statutory right to inquire into them: *Hedley v. Leonard*, 35 M. 71.

80. A patent for land, given as upon an ordinary sale, is of no validity unless the authorities issuing it had jurisdiction to do so; and it is beyond their jurisdiction when the land is under a prior reservation from sale, which remains in force: *Ibid*.

81. Where one knowingly and by collusion with the deputy commissioner of the land office obtained from the state a patent for lands not subject to sale, and on the next day made sale of them at a distant place to another person who had never seen the lands but who had paid for them almost double their valuation, it was held that a strong showing would be required to establish the good faith of such a purchase: *Attorney-General v. Thomas*, 31 M. 365.

82. Under an information to vacate a patent collusively obtained, and which treated the purchase from the state as made for cash, and asked no relief on any other basis, a decree that the purchase price be refunded in scrip was held unwarranted: *Ibid*.

83. A *bona fide* purchaser under a patent from the state is entitled to protection: *Austin v. Dean*, 40 M. 386; *Holcomb v. Mosher*, 50 M. 252.

84. One who knew of a dispute as to the genuineness of an assignment of a land certificate, but who bought under a patent taken out by the holder of the certificate, was held not to be a purchaser in good faith without notice: *Austin v. Dean*, 40 M. 386.

85. A bill to establish a trust in lands wrongfully patented was maintained with costs of both courts against the patentee and defendants claiming under him with notice, but dismissed as to purchasers in good faith with costs to them: *Ibid*.

86. The validity or operation of a government patent is not impaired by neglecting to record it in the registry of the county where the land lies: *Sands v. Davis*, 40 M. 14.

87. The record of a United States patent in the government office at Washington has the same force as the patent: *Ibid*.

88. The state cannot prescribe rules for officers of the general government, as by requiring that a certificate of the cancellation of a patent must be signed by a particular officer: *Davis v. Filer*, 40 M. 810.

89. When the United States grant by patent land described by a legal subdivision, the grantee is entitled to all the land within such subdivision, and is not limited by the number of acres specified in the patent or upon the government plat: *Palmer v. Dodd*, 64 M. 474.

90. No grantee by a patent from the United States granting a legal subdivision of land can derive title to land upon another legal subdivision: *Ibid*.

(b) *By legislative grant.*

91. Lands may be granted by act of congress, or by treaty, as well as by patent: *Stockton v. Williams*, W. 120, 1 D. 546.

92. Under U. S. Rev. Stat., § 2477, granting to highways the right of way across the public lands, a patent is not necessary; the offer and its acceptance by the construction of the road are equivalent to a grant that is good as against the government, and also as against a subsequent patentee, unless the latter's patent antedates the grant by relation, or unless his equities preclude the acquisition of adverse rights: *Flint & P. M. R. Co. v. Gordon*, 41 M. 420.

93. Where, by a treaty with the Chippewa Indians, lands were reserved for certain individuals specified, to be afterwards located in such manner as the president might direct, it was held that this reservation was equivalent to an absolute grant; and the title was conferred by the treaty, though not perfect until the location was made, which was necessary to give the grant identity: *Dewey v. Campau*, 4 M. 565; *Stockton v. Williams*, W. 120, 1 D. 546.

94. A report of the commissioners of the general government appointed for the purpose of settling claims made by citizens of Michigan territory to lands therein, recommending lands for confirmation to a certain person, and an act of congress confirming such recommendation, are equivalent to a grant of such lands: *Solomon v. Groesbeck*, 65 M. 540.

95. Public grants are to be construed strictly; nothing passes under them by implication: *La Plaisance Bay Harbor Company v. Monroe*, W. 155; *Kiefer v. German-American Seminary*, 46 M. 636.

96. A sovereignty making title to its own

lands has a right to determine for itself upon the sufficiency of whatever goes to entitle the claimant to a conveyance: *Clark v. Hall*, 19 M. 356.

97. When the government conveys by act of congress, that which constitutes the deed also constitutes the law which defines the right or estate. No court may subject these sovereign legislative grants, which are more like treaty cessions than they are like individual bargaining, to the definitions and refinements which the rules of municipal law apply to conveyances between man and man. They need not be capable of falling under any of the definitions given to estates by common law. While the government deals with its own, the right or estate granted, whether anomalous, or unprecedented or otherwise, will be entitled to recognition and effect for just what it appears and was intended to be: *Johnson v. Ballou*, 28 M. 379.

98. A legislative grant differs from a grant of a private person in that it is both a grant and a law; and, as such, the intent of the law is to be kept in view, and its purpose effectuated whenever the subject-matter of the grant comes in controversy; and that construction must be placed upon it which will preserve and carry out the object of the legislature, however such construction may conflict with the principles of the common law, or prevent the attaching of equities which would spring from transactions with private parties: *Jackson, L. & S. R. Co. v. Davison*, 65 M. 416.

99. The grant of a sovereignty must have operation according to its intent; it may operate immediately, or from time to time, if such appears to be its purpose: *Ballou v. O'Brien*, 20 M. 304.

100. Where a grant was by the United States, it is presumed that the title had not been previously conveyed: *Tregent v. Whiting*, 14 M. 77.

101. But any grant by the United States must be inoperative as against another which by construction of law antedates it: *Flint & P. M. R. Co. v. Gordon*, 41 M. 420.

102. The state, through its legislature, may grant lands; but its grant, like that of any other grantor, conveys only the title which the state actually possessed in the premises: *Byrne v. Beeson*, 1 D. 179.

103. The state, while acting under the constitution, can impose its own conditions on its own grants: *Rogers v. Port Huron & L. M. R. Co.*, 45 M. 460.

104. A condition in a grant is to be construed strictly against the state; and the state

is entitled to enforce it only when a forfeiture would be fairly within the intent of the act whereby the grant was made: *Kiefer v. German-American Seminary*, 46 M. 636.

105. Where lands or franchises are held under legislative grants, reserving the right of forfeiture for non-performance of conditions subsequent, no judicial decree of forfeiture is necessary: *Jackson, L. & S. R. Co. v. Davison*, 65 M. 416.

III. SWAMP-LAND GRANT.

106. The federal act of 1850 (9 Stat. at L., 519), providing that certain swamp lands "shall be and are hereby granted" to certain states, is a grant *in presenti*, needing only the identification of the lands to make it effective, and is sufficient to give title even without a patent, which is only evidence of title. Even if the patent were necessary it would cut off intervening claimants by relating back to the time when the right to it became perfected. The listing of these lands by the secretary of the interior is held sufficient identification: *Busch v. Donohue*, 31 M. 481.

107. Lands received by the state as "marsh and overflowed lands" under the act of congress of Sept. 28, 1850, could be conveyed by it in 1882 under the swamp-land legislation, although they had meantime become submerged and the water over them navigable: *Sterling v. Jackson*, 69 M. 486.

108. Purchasers of swamp lands from the general government after the passage of the act granting them to the state, but before full title had vested, are protected against subsequent purchasers from the state, though patents have issued to the latter: *Dale v. Turner*, 34 M. 405.

109. A mere listing of swamp lands under the act of congress granting such lands to the state of Michigan, and the approval of such list by the secretary of the interior, was only an act of identification, which could not extinguish any rights previously acquired by individuals by purchasing any of the lands from the United States with cash or land warrants: *Ibid.*

110. H. S. §§ 5384-5, authorizing the state treasurer to receive from the general government the proceeds of swamp lands sold by it after the grant of all such lands to the state in 1850, amounted to a waiver of the state's claim to all such lands as against such intermediate buyers: *Ives v. Ely*, 57 M. 569.

111. An entry of swamp land in good faith, while the title to such lands was in question as between the state and federal governments,

was sufficient to give the person making such entry an equitable claim to the land, which the commissioner of the general land-office could not extinguish without the claimant's consent or some proceeding against him: *Ibid.*

112. The equitable title of one who has made an entry of public land is, when confirmed by act of congress, the highest evidence of title until otherwise adjudged by a court of last resort: *Ibid.*

113. Where the United States had cancelled patents to swamp lands on the ground that they were covered by a grant to the state, H. S. § 5386 gave the patentees or their heirs the right to enter these lands at any time before they were put up for sale. A claim for certain lands was entered accordingly at the state land-office, but before the transfer from the United States to the state had been completed the claimant died. Immediately upon the completion of the transfer certain other parties, who knew of the claimant's equities and had obtained quitclaims from some of his heirs, took patents to themselves, claiming under the act. *Held*, that those who had notice of the claimant's rights took the title in trust for themselves and their co-tenants, the remaining heirs, and it was decreed that they convey to the latter an unencumbered title to their proportion: *Davis v. Filer*, 40 M. 310.

114. The holders of a certificate of purchase of swamp land cannot have relief in equity against a patentee unless they aver and prove substantial compliance with every condition of the statute governing the issue of such certificate: *Bangs v. Stephenson*, 63 M. 661.

115. A bill by the holders of a certificate of purchase of swamp land against a patentee must aver settlement and cultivation within one year after its issue by the purchaser or his assigns; and, if it does not, such bill is bad for laches: *Ibid.*

116. Where a locator of swamp lands comes within the provisions of the act of congress of March 2, 1855, giving relief to those who had made entries prior to the issue of patents to the state, a person deriving title subsequently from the state holds his apparent title in trust for such locator and those holding under him: *Huggett v. Case*, 61 M. 480.

117. Act 31 of 1858, for the sale of the state swamp lands, made (H. S. § 5398) provision for two distinct classes of purchasers, namely: settlers and occupants of such lands at the time of the passage of such act, who should have been such Dec. 1, 1857, and owners and occupants of adjoining lands who were such

Dec. 1, 1857: *People v. State Treasurer*, 7 M. 366.

118. Occupancy of the adjoining lands, under the swamp-land act of 1858 (H. S. § 5398), might consist of cultivation and use, without actual residence, or might be by a tenant: *Ibid.*

119. H. S. §§ 5436-5443, which permit licenses to be issued to actual settlers who clear and drain the lands, should not be technically construed for the purpose of defeating their benevolent intent, especially when such construction is not demanded by any grievance: *Hedley v. Leonard*, 35 M. 71.

120. An unmarried man who lives with his father on a parcel adjoining the land for which he holds a settler's license may fairly be said to reside on such land, if the two parcels are used and to some extent enclosed together, and if his occupation is honestly designed as home occupation: *Ibid.*

121. The commissioner of the state land-office has no authority to forfeit the license issued to a settler who, though he does not live upon the land, continues, after taking the proper preliminary steps, to make important improvements by clearing and draining, and keeps up his occupation for that purpose (H. S. § 5443): *Ibid.*

122. A settler's license cannot be forfeited by the commissioner of the land-office unless upon a clear case and a showing of both non-residence and abandonment (H. S. § 5443); the commissioner must use his judgment on the showing: *Ibid.*

123. A settler holding a license from the state cannot be deprived of his rights by any *ex parte* determination made by the commissioner of the land-office in conflict with the facts; the commissioner can intervene only when the settler has given up his rights: *Ibid.*

124. An outstanding settler's license must be avoided by a declaration made by the commissioner of the land-office before the land can be sold by the state to any one else; the avoidance is not to be left to inference: *Ibid.*

125. Persons holding land under a patent which was issued as if upon sale in the open market were compelled to release to one who claimed under a patent of later date, which was issued in confirmation of a settler's license that antedated the adverse title: *Ibid.*

126. A bill in equity filed by a settler on swamp land to enforce a right under the swamp-land acts of 1859 and 1861 (H. S. §§ 5436-41) must show a substantial compliance with every provision of the act on which the right depends: *Remeau v. Mills*, 24 M. 15.

127. In providing for the entry of swamp

lands on presentation of a certificate of cancellation signed by the register of the federal land-office, H. S. § 5386 merely provides for official evidence, and does not prescribe who must sign the certificate: *Davis v. Filer*, 40 M. 310.

128. H. S. § 5386 provides that the "assigns" of any purchaser of United States lands whose purchase has been cancelled on the ground that they were swamp lands can buy them from the state on presenting his certificate of purchase and cancellation before the state has disposed of them. *Held*, that this means only the "assigns" of the purchaser's ownership or supposed ownership in the land itself, and not of a mere interest incident to the option remaining in the purchaser: *Ely v. State Land-Office Commissioner*, 49 M. 17.

129. Under act 239 of 1863, § 4, it was *held* that the time which would govern as to the right of selection of the lands to be withheld from sale would be the time at which the commissioner of the land-office was notified that they had been selected: *People v. State Land-Office Commissioner*, 23 M. 270.

130. It was *held* that the right of selection attached to each parcel of land in the order in which it was described in the list of selected lands sent to the land-office, and that if any tract mentioned had been sold before the commissioner was notified of the selection, or was for any other reason to be omitted, the order of the list should be pursued as if such tract had never been included. And there was no right to include in the list any greater amount of land than the act authorized to be selected: *Ibid.*

131. Where a commissioner of the land-office, in patenting lands, had himself so departed from a rule restricting the demand for patents to the order of selection as shown in the lists of lands that it was thereafter impracticable to observe such order, it was *held* that the right to select belonged rather to the applicant for patents than to the commissioner, and that the latter could not withhold patents on the ground that the demand did not conform to the rule: *Ibid.*

132. It was *held* that act 239 of 1863 applied to all swamp lands in the Upper Peninsula of Michigan, "not otherwise appropriated," whether classed as mineral lands or not, and that the term "appropriated" here signified an appropriation by the legislature for some purpose similar to that here intended — a disposition of the lands in some way, by which the state was to part with its title: *Ibid.*

133. The rule restricting the demand for patents to the order of selection would cease

to operate at the expiration of the period for which, the lands were to be withheld from sale; and, as former selections no longer bind the state, they would not bind the applicant, who might then select other remaining lands, and demand patents for them, which would be a selection in itself. But any sales made by the state to individuals of previously selected lands, after they ceased to be withheld from sale and prior to a demand for patents, would be valid, and the original applicant would lose all right to the land so sold: *Ibid.*

134. In a proceeding to compel the issue of patents to certain lands, it was held that, where patents had already issued to parties who had disposed of the lands so patented to other parties who had not appeared to show cause, and upon whom no process had been served, the rights of such latter parties would not be passed upon, nor would the circuit court order the issuing of another patent for such lands. Whether, in such proceeding, the court could invalidate the prior patent, and whether it could be done in any way except by *scire facias* for that special purpose, or by bill in chancery, *quere: Ibid.*

135. The provision of H. S. § 5355 that swamp and primary school lands in the mineral range of the Upper Peninsula, theretofore withheld from market as mineral lands, should, with certain exceptions, be re-offered and sold in the same manner as other swamp and primary school lands, contemplates an offering at public auction before they are subject to private entry at the land-office: *Attorney-General v. Smith*, 31 M. 359.

136. It had been the settled policy of Michigan before the passage of act 145 of 1863 (H. S. §§ 5355-58), that while none of the swamp and primary school lands of the mineral range of the Upper Peninsula should be disposed of at less than a fixed minimum price, an opportunity should be made for obtaining the highest price that competition could bring on offering them at public sale, after due notice, before they were to be entered on the books of the land-office as subject to sale on private application; and an intent will not be lightly inferred, from any mere equivocal words, to depart from this settled policy, especially in the case of lands which had been supposed exceptionally valuable and reserved for that reason from the previous public offerings: *Ibid.*

137. Where an information to vacate a patent issued by the commissioner of the state land-office avers that the lands in question had been selected and reserved by the governor under H. S. § 5355, so as to except them

from its operation, and also that they were never offered for sale subsequent to that act or to their reservation thereunder, the information is sufficient to warrant relief from the patent on the ground that it was invalid for the want of such a re-offering of the lands in accordance with the requirements of the act as to make them subject, under its provisions, to a valid private entry: *Ibid.*

138. One who knew, before the issuing by the state to his grantor, of a patent for the lands he claims, that the state authorities claimed that the lands covered by the patent were reserved from sale, and who also knew of ineffectual attempts to purchase them from the state, had sufficient notice to put him on inquiry, and subject him to any equities growing out of any mistake or fraud under which the patent had been issued, and he is not entitled to any consideration as a *bona fide* purchaser: *Ibid.*

139. A patent based on a sale by private entry at the state land-office and conveying "indemnity lands" of the state, which had never been offered for sale at public auction, is held void. These lands, if not to be considered as included by intendment in the general designation of swamp lands, so as to be subject to the state regulations as to the sales of such lands, were not subject to sale at all, for want of any legislation providing for it: *Attorney-General v. Thomas*, 31 M. 365.

140. The commissioner of the state land-office has no power to adjudge void and cancel a certificate of purchase of swamp land issued through mistake, fraud, etc.; and he cannot resell the land unless the certificate is voluntarily returned, or is adjudged void by the proper court: *People v. State Treasurer*, 7 M. 366.

141. A purchaser of state swamp lands bought when the conditions entitling him to a deed were that he should pay one-fourth down, and the rest, with interest, at any time thereafter. A subsequent statute added the condition to such sales that the taxes should also be paid. The purchaser afterwards assigned his certificates of purchase; and the assignee, after paying the rest of the purchase price and the interest, demanded from the commissioner of the land-office a certificate entitling him to his deed. The commissioner refused because the taxes had not been paid. *Mandamus* was granted to compel him to issue the certificate; but it was also held that the state did not release any tax lien on the land by giving a deed, and that this would not govern a case where the certificate of purchase had been issued after the passage of

the statute: *Robertson v. State Land-Office Commissioner*, 44 M. 274.

142. A deed from the governor for a parcel of swamp lands will confer no title unless given pursuant to some law: *Remeau v. Mills*, 24 M. 15; *Attorney-General v. Smith*, 31 M. 359.

143. Under the act of 1859, p. 310 (see H. S. § 5414), authorizing contractors for swamp roads to take lands in lieu of money, they can only take such lands as are subject to entry at private sale: *People v. Pritchard*, 17 M. 260.

144. Lands reserved from sale by a road contractor under a state contract are reserved for the full time specified in the contract for its fulfilment; and if the board of control of state swamp lands extends the time for fulfilment, the reservation is also extended for the same time: *Newcombe v. Chesebrough*, 33 M. 321.

145. The renewal by the board of control of state swamp lands of a road contract, the time for which had already expired, does not revive the reservation of lands thereon that have been already forfeited and subsequently acquired by another: *Ibid.*

146. Lands are not withdrawn from market on a state road contract unless reserved within the time limited for the completion of the work: *French v. Christy*, 37 M. 279.

147. On application for the reservation of land on a state road contract, an officer of the land-office marked the descriptions of land applied for on a plat-book of the office. No list of the lands wanted was filed by the applicant, as required by H. S. § 5414, until after the time specified in the contract for the completion of the work. *Held* insufficient as a reservation: *Ibid.*

148. Act 19 of 1879, amending act 481 of 1871, appropriated swamp lands to pay for the construction of a certain state road, and provided that the lands selected should be reserved from private entry as soon as a list of them should be filed with the commissioner of the state land-office. A reservation was accordingly made, which, however, exceeded the amount authorized by from two to three thousand acres. This reservation was not to last more than three years, and on "satisfactory showing to the board of control of state swamp lands by a certificate from the state swamp land commissioner . . . that said road had been constructed in as good and substantial a manner as the board now require," the lands should be patented to the counties engaged in building the road, or to their assigns. After the three-year period expired, a person holding swamp land scrip earned

under act 239 of 1863 applied to the commissioner of the land-office for patents to 320 acres of the lands included in the reservation, and, taking these lands in the order in which they were listed, the lands applied for were among those properly appropriated and not in the surplus. The commissioner refused, and the applicant sought by *mandamus* to compel him, to issue the patents. *Held*, unimportant to this case that the county clerks of the counties which built the road did not, as directed by the supervisors, actually execute assignments of the interests of the counties to the road contractor; the rights of the counties and of their assigns vested as soon as the act was complied with, if this took place within the period to which the reservation of the land was limited and if the swamp land commissioner's certificate was duly filed. This certificate stated that the road was constructed in as substantial a manner as was required by the board of control "at the time of the passage of the act locating said road." *Held*, that this expression corresponded to the word *now* in the act, and that the word *now* did not refer to the period of the adoption of the original act, but to the date of the amendatory statute, as the two enactments established roads under different names. And it was not necessary and could not be required that the road should be accepted by the board of control; that body was only to receive a "satisfactory" showing, which showing was to be the swamp land commissioner's certificate. And none of the lands reserved, taken in the order of their descriptions in the list, were subject to private entry: *Chadbourne v. State Land-Office Commissioner*, 59 M. 113.

IV. GRANTS TO CANALS AND RAILROADS.

149. The grant to the state of Michigan of land to locate a canal upon at the falls of the St. Mary extends only to the military reserve, and does not include private property below it: *Ryan v. Brown*, 18 M. 196.

150. The action of the state in accepting, with its conditions, a congressional grant of land for the benefit of a corporation organized to build a canal under the state law, and in granting said land to the corporation on certain conditions,—congress afterward adding more land for the benefit of the corporation according to such conditions,—fixed in the corporation building the canal and fulfilling the imposed conditions a contract right with a right of possession of the lands so granted: *Attorney-General v. Lake Superior Ship Canal, R. & Iron Co.*, 32 M. 233.

151. The land grants made by the acts of congress of 1865 and 1866 to aid in the construction of the Portage Ship Canal must be assumed to have been made by congress with a knowledge of the provision of the state constitution inhibiting the state from engaging in any work of internal improvement, as well as to comply with the expressed will of the state as contained in the joint resolution of Jan. 21, 1865, asking aid for this work; and the acts of congress conferring these grants must be regarded as intended to leave the state full discretion in the choice of agencies, as had before been the case with railroad grants: *Ibid*.

152. Under the act of congress of June 8, 1856, granting to the state of Michigan certain lands to aid in the construction of certain railroads from Grand Haven and Pere Marquette to Flint and thence to Port Huron, and the act of the legislature of Michigan of Feb. 14, 1857 (Laws of 1857, p. 346), accepting said grant and conferring upon the Detroit & Milwaukee Railway Co. so much of said lands as pertain or attach to said route from Grand Haven to Owosso, and upon the Port Huron & Milwaukee Co. so much thereof as pertain or attach to said route from Owosso to Flint and thence to Port Huron, and providing for a board of control to manage and dispose of said lands in aid of said railroads in the manner provided in said act, with authority, in case of failure of either of said companies, to accept said lands or perform the conditions of said grant, to declare said lands forfeited to the state, and confer the same upon some other competent party under the general regulations and restrictions of said act, it is *held* not within the authority of said board of control, upon forfeiture of the grant to the Detroit & Milwaukee Railway Co., to transfer the same to the Port Huron & Milwaukee Company, which was engaged in building a road from Port Huron to Flint, but did not propose to construct a road from Grand Haven to Owosso. The grants were distinct, and the design was to provide for two distinct lines intersecting at Owosso, and to aid each by a grant of the lands lying within the prescribed distance along and near it; and a conveyance to said latter company, for the construction of a portion of the line easterly of Owosso, of lands lying westerly thereof and pertaining to the other line provided for, is *held* invalid. It is immaterial that the charter of the company authorized it to build a road from Owosso westerly to Grand Haven; for there must be something more than a paper line, and while it remains on paper only, with

no intention on the part of the company to actually build the road, there is nothing to which the grant can be applied: *Bowes v. Haywood*, 35 M. 241.

153. The act of congress of June 8, 1856 (11 U. S. Stat. at Large, p. 21), granting lands for building a railroad from Amboy, by Hillsdale and Lansing, to some point on or near Traverse Bay, was a present grant of the lands included in its terms. The right of selection vested in the railroad company as soon as it earned them, and a sale by the company of any specific parcels of land, not exceeding the quantity earned and lying within the limits specified in the grant, was, to that extent, an effectual selection: *Johnson v. Ballou*, 28 M. 379; *Jackson, L. & S. R. Co. v. Davison*, 65 M. 416.

154. The board of control created by Mich. act of Feb. 14, 1857, could not qualify the right of selection or subject it to any conditions not performed or waived; nor was such board vested with any power over the lands contained in the grant except in cases of non-performance or of conflict, in which cases the board might declare a forfeiture or adjust the controversy: *Ibid*.

155. The intention of said act was that the bounty, aside from the first 120 sections, should be bestowed as fast as each continuous length of twenty miles was constructed, and no faster; so that neither the state nor a company authorized to build the road could convey or encumber lands not earned by construction; and a conveyance by the state to a railroad of lands in excess of those at that time earned is not a grant subject to forfeiture, but void, even though the road subsequently earned such lands: *Ibid*.

156. The arrangement between the A., L. & T. B. R. Co. and the J., L. & S. R. Co., and the legislation following the same, by which the beneficial interest of the former in the land grant was transferred to the latter, could not operate to affect rights previously acquired by third parties: *Johnson v. Ballou*, 28 M. 379.

157. Said act of congress required each quantity of 120 acres to be selected from a continuous strip twenty miles in length of the road and from a strip on either side of the road lying within six miles of it, if sufficient land could be found unappropriated therein. A deed by the railroad company for lands outside of the prescribed limits was made at a time when the road had already conveyed more land than it had earned, and was therefore invalid, but the land conveyed in prior deeds, which exhausted the grant earned, also

contained land outside those limits. *Held*, that the selection made by the prior deeds must now stand valid, since none but the United States can now question it; and they probably will not do so, as the purpose of the grant has been accomplished: *Jackson, L. & S. R. Co. v. Davison*, 65 M. 416.

158. The J., L. & S. R. Co. was, by Mich. act, March 18, 1865, authorized to agree with the A., L. & T. B. R. Co. for the location of its line on the lines of the latter, and in such case to receive the land grant of the latter, and to purchase its railroad and property. Oct. 6, 1866, such agreement, location and purchase were made. Subsequently the property of the A. Co. passed on foreclosure sale to the J. Co., which in due time completed the road, and received patents to all the land grant the A. Co. had failed to earn. *Held*, that the right of the A. Co. to earn the grant was not transferable; that the effect of the assignment to the J. Co. was a surrender of the right to the state, and which it was authorized to confer, and did confer, by said act of 1865, upon the J. Co., and that, therefore, the right of the J. Co. to earn and obtain the grant was derived not from the assignment but from said act of 1866: *Ibid*.

159. Act 182 of 1877, confirming the transfer by the governor and by the board of control of railroads to the Port Huron & L. M., A. Co. of lands granted by congress to the state in aid of the construction of railroads, and at first assigned to the Detroit & M. R. Co., was void as impairing the general government's conditional right of reverter for non-completion within a specified time of the roads to which the state assigned the lands: *Fenn v. Kinsey*, 45 M. 446.

160. Congress, by an act passed June 8, 1856, granted certain lands to the state of Michigan, to be used solely in aid of the construction of railroads. The state, by act 156 of 1857, set them apart for the benefit of certain designated roads, on condition that the beneficiaries should accept them subject to the terms of the act. *Held*, in a case in which the acceptance was qualified, that the company acquired no title, and that a bill would not lie to quiet a title to the lands obtained by execution against the beneficiary intended by the statute: *Rogers v. Port Huron & L. M. R. Co.*, 45 M. 460.

161. Railroad companies which accepted the congressional grant of public lands under the provisions of act 26 of 1857 acquired rights which could not be destroyed except by their own neglect: *Ibid*.

162. The transfer by mutual agreement

and legislation of the beneficial interest of the Amboy, Lansing & Traverse Bay Railroad Company in the land grant to the Jackson, Lansing & Saginaw Railroad Company could not affect rights previously acquired by third parties, and the government's patent to the latter company was unimportant, as the government then had no title: *Johnson v. Ballou*, 28 M. 379.

163. Where the location of a line of railroad was to fix the identity of certain lands granted by the government to the use of said road, and lying upon either side of it, the effect of the grant and location was to take out of the body of lands subject to sale by the United States the sections of land covered by the floating title already conveyed; an application to purchase these lands would give no right to go upon them or to cut the timber. Whether or not the land-officers of the United States were still charged with the duty of protecting these lands against trespassers, they could not, as against the railroad company, sell off the timber, and thus deprive the company of a portion of the benefit intended by the grant: *Ibid*.

164. A patent for lands embraced in a grant for the use of a railroad company was held, as against trespassers, to relate back at least to the time when the lands were earned: *Ibid*.

165. Under act 197 of 1883, for the relief of innocent purchasers and actual settlers on certain railroad lands, the title to which had been held invalid, a claimant may select from the descriptions in his deed, which he desires patents for, not exceeding the 160 acres limited by the act; and the commissioner cannot make the selection for him unless requested to do so. But in order to make up the exact quantity of 160 acres a government description cannot be subdivided: *Webster v. Newell*, 66 M. 508.

166. A claimant under said act of 1883 is entitled to have the commissioner of the state land-office enjoined from selling the lands until complainant can make the selection to which he is entitled: *Ibid*.

167. Said act 197 of 1883, being a statute granting privileges, not rights, its requirements must be strictly complied with: *Paine v. Newell*, 66 M. 245.

168. Under said act of 1883, the purchaser claiming a patent must show a deed valid on its face. If the deed to him was so drawn as not to cover the land, it would have to be corrected and re-acknowledged in time to save the title under the statute, else it would not save the statutory privilege: *Ibid*.

169. Under said act of 1888, unless the claim and its proofs were presented within six months after the statute took effect, it was too late. March 8th being the last day, an averment that the papers were filed "on or about" that day is insufficient: *Ibid.*

V. INDIAN LANDS.

170. A patent issued by the president to a person claiming to be a reservee under the Saginaw treaty of Sept. 24, 1819, was void, and could in nowise affect the title of the reservee under the treaty: *Stockton v. Williams*, W. 120, 1 D. 546.

171. Where a treaty with an Indian tribe reserves for the use of persons therein named, and their heirs, certain designated quantities of land to be located as the president of the United States may direct, such reservation is equivalent to an absolute grant, and passes at once an estate in fee-simple which attaches as soon as the lands are located: *Dewey v. Campau*, 4 M. 565; *Stockton v. Williams*, W. 120, 1 D. 546.

172. Indians have no power to dispose of the fee of their lands, except to the United States, without the concurrence of the government: *Cook v. Biddle*, 2 M. 269.

173. The treaty of Oct. 18, 1864, with the Chippewa Indians, provided for patenting public lands in fee-simple to such as would have been declared "competent," and under restrictions to those who were not competent. *Held*, that the practical construction put on the treaty was that the determination of competency and the selection of the grantee's land became operative together, when fixed by the proper official authority, and that if an Indian disposed of the land he expected to receive before he was found to be "competent," such disposition would be invalid; the finding of competency does not relate back: *Raymond v. Shawboose*, 84 M. 142.

174. The executive department is not so bound by the conduct of the Indian agents that it cannot repudiate their frauds and decline to follow their false decisions: *Ibid.*

VI. SCHOOL LANDS.

As to escheats, see ESTATES OF DECEDENTS, IX, (d).

175. The words employed in the proposition relating to school lands in the act of congress for the admission of Michigan to the Union indicate an intent on the part of the United States that the grant should have a

continuous operation; and therefore lands reserved for the benefit of Indian tribes by treaties with them prior to the admission of the state will, on the extinguishment of the Indian title, be presumed, as against a trespasser, to be embraced within the proposition aforesaid: *Ballou v. O'Brien*, 20 M. 804.

176. The act of 1837 setting apart seventy-five per cent. of the proceeds of swamp lands for the primary school fund does not constitute such an appropriation of the lands to educational purposes as to place them, under § 2, art. 13, of the constitution, beyond legislative control: *People v. Auditor-General*, 12 M. 171.

177. The subsequent acts, reducing the proportion thus set apart, and appropriating lands to the construction of roads, were therefore not invalid: *Ibid.*

And see SCHOOLS, § 96.

178. A trespasser upon a section 16 reserved for school purposes, claiming a title adverse to that of the state, cannot inquire into mere irregularities by which the state sells the land under its own statutes. The state alone can complain of the sale: *Cooper v. Roberts*, 18 How. (U. S.) 178.

179. By the act providing for the admission of Michigan into the Union (which, when accepted by the state, became an irrevocable compact), section 16 in every township not sold or otherwise disposed of was granted to the state for school purposes. As the government extended its surveys, so that the location of those sections was ascertained, the title of the state became complete and could be sold without the consent of congress; and the act of March 1, 1847 (9 U. S. St. at L. 146), does not authorize the sale by the United States of any lands, mineral or otherwise, which fall within section 16; nor could a lease made by the secretary of war for mining purposes impair the state's title to such lands: *Ibid.*; *Minnesota Mining Co. v. National Mining Co.*, 11 M. 186, 8 Wall. 882.

180. Where a lot belonging to the primary school lands was conveyed by deed in 1850, and for the following twenty-two years treated as out of the market, the commissioner of the land-office will not, upon proof that such deed is void, and that there is no such society as that named as grantee therein, be compelled by *mandamus* to sell the same now at the price of an appraisal made in 1850; H. S. § 5276 authorizes him to refuse to sell such lands, if, in his opinion, the doing so would be beneficial to the several funds affected thereby: *Chapman v. State Land-Office Commissioner*, 26 M. 146.

181. Where a petition for a *mandamus* to compel the sale of public land alleges that, when the relator applied to purchase it, the commissioner of the state land-office assigned, as his reason for refusing to sell, the existence of a former deed which turned out to be void, this is not equivalent to an allegation that but for the deed the lot was subject to sale, or that when the deed was executed it was subject to sale at an appraisal made before that; the commissioner's omission to assign any other reason is only circumstantial evidence: *Ibid.*

182. A certificate of the sale of primary school lands, signed by a clerk in the office of the superintendent of public instruction, was held not well executed under the laws in force in 1841, though he added after his name, "For J. D. P., Superintendent of Public Instruction:" *Lee v. Payne*, 4 M. 106.

183. A bill was filed to compel the re-assignment of primary school land certificates wrongfully withheld, and it was claimed in defence that as complainants had obtained these lands from the state by fraud, in filing an affidavit that they were chiefly valuable for agricultural purposes, when they were really valuable for pine timber, they were not entitled to relief. *Held*, that defendants could not avail themselves of such an objection; the question of value only concerned the state, which appeared to be abundantly secured: *Spoon v. Gilbert*, 44 M. 535.

VII. AGRICULTURAL COLLEGE LANDS.

184. The agricultural college land-grant board had the right to determine, or to authorize the land commissioner to determine, what portion of these lands should be sold as timbered lands under the act of 1863, as amended by the act of 1869, provided such action was not the result of fraud on their part: *Attorney-General v. Ruggles*, 59 M. 123.

185. One who is alleged to have procured agricultural college lands to be entered for his benefit in names other than his own need not disprove the charge until some evidence is offered to prove it: *Ibid.*

186. Where agricultural college lands valuable for timber had been bought of the state under circumstances of fraud at an undervaluation, *held*, that the land-grant board, or the attorney-general and land commissioner acting under their authority, could make a settlement of suits pending between the purchaser and the state which would bind the latter and bar the claim of fraud: *Ibid.*

187. That a purchaser from the state of

agricultural college lands does not divulge to the commissioner his knowledge as to the present or prospective value of property as timber land is not actionable fraud: *Ibid.*

188. Circumstances surrounding the purchase of timbered agricultural college land *held* to stamp the transaction as fraudulent: *Ibid.*

VIII. TRESPASS ON PUBLIC LANDS.

189. The general government has all the common-law rights of an individual in respect to depredations committed upon the public lands. And the commissioners of the general land-office may lawfully direct the seizure and sale, by the local land-officers, on behalf of the government, of timber cut by trespassers on the public lands: *Stephenson v. Little*, 10 M. 433.

190. The commissioner of the state land-office appointed an agent to reclaim timber wrongfully taken from state lands. The agent reclaimed certain logs from trespasser, and sold them at private sale. In replevin for the logs by the purchaser it was objected that the commissioner had no power to make any such appointment, and, if he had, the sale must be public. *Held*, that the trespasser or the one claiming under him would not be heard to urge the first objection, and that the sale was not invalid because of being private, if the case was free from circumstances of secrecy or fraud: *Ballou v. O'Brien*, 20 M. 304.

191. A bill in equity will not lie to reach money received by the proper state officers in settlement of a trespass on public lands, even though complainant claims that the settlement was procured by false representations as to the extent of the trespass, or by threats of imprisonment: *McElroy v. Swart*, 57 M. 500.

As to venue of trial of action against trespasser, see CONSTITUTIONS, § 74.

QUO WARRANTO.

I. GENERAL PRINCIPLES; LEAVE TO FILE INFORMATION: WHEN PROPER REMEDY.

II. PARTIES.

III. PLEADINGS.

(a) *General rules.*

(b) *Informations.*

(c) *Pleas.*

(d) *Replications.*

(e) *Demurrers.*

IV. EVIDENCE.

V. PRACTICE.

- (a) *In general.*
- (b) *Venue; trial of issue.*
- (c) *New trials.*

VI. JUDGMENT.

I. GENERAL PRINCIPLES; LEAVE TO FILE INFORMATION; WHEN THE PROPER REMEDY.

1. *Quo warranto* proceedings should generally be instituted in the circuit court: *Coon v. Attorney-General*, 42 M. 65.

2. It is discretionary with the supreme court to grant an application for leave to file an information in the nature of *quo warranto*: *People v. Tisdale*, 1 D. 59; *Attorney-General v. Erie & K. R. Co.*, 55 M. 15.

3. H. S. § 8662, subd. 2, permitting a private relator, on leave granted, to file an information in the circuit court to try the title to an office, contemplates that a showing for leave shall be made: *Vrooman v. Michie*, 69 M. 42.

4. Whether the supreme court would require the attorney-general to file an information in the nature of *quo warranto* against his own judgment, *quere*: *Coon's Case*, 42 M. 65.

5. The attorney-general has the same discretion in cases on relation as in other cases, under the law requiring him to file informations in the nature of *quo warranto* where he has good reason to believe they can be established: *Yates v. Attorney-General*, 41 M. 728.

6. And the supreme court will not review his discretion in refusing to file an information where it is not clearly abused, and where the proceeding could not benefit the relator: *Ibid.*

7. Where a person intrudes himself into an office, in consequence of the unlawful decision of a board of canvassers, the proper remedy is by motion to the supreme court for leave to file an information in the nature of a *quo warranto* to try the right to such office: *People v. Tisdale*, 1 D. 59.

8. The right to a public office is to be settled by a proceeding in the nature of *quo warranto*: *Curran v. Norris*, 58 M. 512.

9. *Quo warranto* is the only way to try titles to office finally and conclusively: *Frey v. Michie*, 68 M. 323.

10. *Quo warranto* is the proper proceeding to determine between two municipal bodies asserting the same power of appointment; the boundaries of their franchises must be determined by *quo warranto*: *Ibid.*

11. The proceeding by *quo warranto* will not lie when an office is vacant: *Wayne Auditors v. Benoit*, 20 M. 176.

12. Whether information in the nature of *quo warranto* lies in the case of an office not created by the state, *quere*: *Throop v. Langdon*, 40 M. 674.

13. Probate judges are not within the exception in H. S. § 8662, which permits informations in the nature of *quo warranto* to be filed in the circuit court except against state officers: *Secord v. Foutch*, 44 M. 89.

14. An information in the nature of *quo warranto* will not lie against an alleged township whose organization is invalid on the face of the record; it will lie, however, against the several town officers for usurping franchises, but would not lead to any judgment reaching the whole controversy in one record: *Scrafford v. Gladwin Supervisors*, 41 M. 648.

15. *Quo warranto* against the district or its officers is the proper proceeding to test the validity of the organization of a school district: *Owosso Fractional School District v. School Inspectors*, 27 M. 3.

16. There should, however, be some special and extraordinary reason to justify interference by *quo warranto* with the organization of a school district, as the statutes provide a speedier remedy by an appeal from the district board to the township board: *Lord v. Every*, 38 M. 405.

17. The state cannot be estopped from instituting *quo warranto* proceedings against a corporate body on the ground that it has been recognized as a corporation by a municipality: *Attorney-General v. Hanchett*, 42 M. 486.

18. Whether *quo warranto* or *scire facias* was the proper remedy, prior to Rev. Stat. 1846, by which to proceed against a private corporation for violating its charter, *quere*: *People v. Oakland County Bank*, 1 D. 282.

19. A judgment creditor's application for leave to file an information in the nature of a *quo warranto* to enforce a forfeiture for non-user of the rights and franchises of a manufacturing company was *denied* in the absence of any showing that the statutory remedy provided for judgment creditors, and which is deemed the more appropriate one, is not available: *Carpenter v. Wayland Wood Manuf. Co.*, 33 M. 418.

20. The statute (H. S., ch. 298) concerning informations in the nature of a *quo warranto* contemplates the punishment of corporations for the violation of state law and policy only: *Maybury v. Mutual Gas-Light Co.*, 38 M. 154.

21. Leave to file an information was denied where the purpose was to deprive a certain gas company of the right to lay pipe and distribute gas in Detroit, on the ground that it had forfeited the right by violating certain

conditions imposed by the city in granting it: *Ibid.*

22. And such leave was denied where the respondent was a railroad company, the forfeiture of whose charter would not redress the grievance complained of, which was that its lessee had discontinued part of its route and side-tracked a village, which complained of the consequent loss of facilities for transportation: *Attorney-General v. Erie & K. R. Co.*, 55 M. 15.

23. An information cannot be filed under H. S. § 8635, subd. 3, where the articles of association state a purpose for which the statute authorizes a corporation to be formed, and where the requirements of law preliminary to incorporation are fulfilled. The question whether the corporation is exercising any franchise or privilege not conferred by law is to be tested by information filed, on leave of court, under § 8646: *Attorney-General v. Lorman*, 59 M. 157.

Remedy discretionary, see CONSTITUTIONS, § 200.

II. PARTIES.

24. Persons claiming to be wardens and vestrymen of a religious society cannot join as relators to test in one proceeding their right to the offices respectively against adverse claimants: *People v. De Mill*, 15 M. 164.

25. *Quo warranto* against a single officer of a municipality does not make the corporation a party any more than it would be in a private suit: *Scrafford v. Gladwin Supervisors*, 41 M. 648. Even though its attorney files a brief: *People v. Hatch*, 60 M. 229.

III. PLEADINGS.

(a) General rules.

26. The pleadings in *quo warranto* cases are governed by the rules in civil cases, except so far as the statutes modifying these rules are, from their terms, applicable: *People v. Miller*, 15 M. 354.

27. The statutes prescribe the form of pleading on suggestion of damages on *quo warranto*, and the supreme court will not prescribe any other: *People v. Sackett*, 15 M. 315.

(b) Informations.

28. The information need not be entitled of any particular day. It is governed by the rules of pleading in civil cases, and an allegation that the defendant "for the space of two days last past, has usurped," etc., is sufficient; it refers to the two days next preceding the presenting of the information: *People v. Miller*, 15 M. 354.

29. Where the information, charging the defendant with usurping the office, and requiring him to show his right thereto, contains in addition an allegation that the relator, by virtue and warrant of due and regular election, is in law and in right entitled to have, hold and exercise said office, it is not necessary that the relator's title to the office be set forth: *People v. Miles*, 2 M. 348.

30. In an information for intruding into a corporate office it is not sufficient to aver in general terms the corporate existence, unless the corporation is by special statute. The information should set forth such facts as, in connection with the general statutes of which the court can take judicial notice, will make out the corporate existence, that being a jurisdictional fact: *People v. De Mill*, 15 M. 164.

31. If the corporation is created by special statute its existence need not, in general, be shown by further averment; but where not so created it must be made out according to the facts: *Ibid.*

32. Where the court is not judicially informed concerning the nature of an alleged office in a corporation, it ought to be so described in the information, as to its nature and duties, as to enable the court to determine whether it comes within the purview of the statute giving this remedy for usurpation of franchises: *Ibid.*

33. It is not necessary to set forth the franchises and privileges alleged to be usurped, except in general terms. It is always the right of the government to call upon those who assume corporate powers to show by what warrant they do so; and, when the defendants set forth their claims by plea, the attorney-general may show by replication the special grounds he relies on: *People v. River Raisin & L. E. R. Co.*, 12 M. 889.

34. An information in *quo warranto* need not set forth the facts which would negative the respondent's title, and the respondent cannot, therefore, demur to it for that deficiency, if it is otherwise sufficient; but wherever he relies upon his own title he must make a showing of it by his own pleadings: *Larke v. Crawford*, 28 M. 88.

35. An information in the nature of a *quo warranto* is not demurrable for stating that a municipality "was and now is possessed" of certain premises, and that respondents unlawfully hold and exercise the franchises of taking possession of them for a public park. Possession for restricted purposes would not exclude possession as an owner: *Mayor v. Park Commissioners*, 44 M. 602.

(c) *Pleas.*

36. In *quo warranto* causes the respondent must either disclaim or justify, and the plea is the first pleading that indicates the facts concerning which the controversy as to the right of office will arise: *Larke v. Crawford*, 28 M. 88.

37. When the respondent disclaims holding the office in dispute, no controversy of fact can arise beyond the simple question of his exercise of the office: *Ibid.*

38. A plea of justification must show all the facts necessary to establish respondent's lawful right to the office in question. No issue of fact can be joined in such cases except upon a replication or some pleading subsequent thereto, either by denial or by confession and avoidance: *Ibid.*

39. All that is necessary to state in a plea of title to an office is the authority for holding the election, the holding it, and that defendant received the greatest number of votes for the office: *People v. Van Cleve*, 1 M. 362.

40. Where an information charging respondent with intruding into a public office avers that an election to fill the office was held, that relator received a certain number of votes, and was thereby elected, a plea to such information that no election was held for this office, and that no votes were cast for this purpose, should conclude to the country, and not with a verification: *People v. Hartwell*, 12 M. 508.

41. Where the plea to an information for entering into a public office shows that respondent has been declared elected it need not aver his citizenship or other qualifications for office. And if it states the number of votes cast at the election it need not explicitly negative the casting of a greater number; nor need it be verified (see, as to verification, *Larke v. Crawford*, 28 M. 88): *Attorney-General v. McIvor*, 58 M. 516.

42. Upon an information filed by a private relator, a plea showing that relator has no right to the office in question is a complete defence, if established: *Vrooman v. Michie*, 69 M. 42.

43. Immaterial statements in a plea to an information in *quo warranto* about the proceedings of the county board of canvassers may be struck out as surplusage: *People v. Van Cleve*, 1 M. 362.

44. Information calling upon the defendants to show by what right they assume to exercise certain banking powers. Plea, setting forth a charter of defendants as a railroad corporation, which gave them no authority to

issue circulating notes; and stating the issue by defendants of certain certificates which, as described, might or might not be within the statute against unlawful banking, and then denying that defendants have exercised the franchises charged, "except as aforesaid." Held that, as the plea neither confessed nor denied the exercise of banking powers, the issue tendered by it was immaterial: *Ibid.*

45. To an information in the nature of a *quo warranto*, requiring a corporation to answer by what warrant it claimed to have, use and enjoy certain corporate powers, etc., which it was therein alleged to have usurped, a plea setting forth the charter of the corporation, by which the powers claimed were conferred *in presenti*, is a *prima facie* defence; for, the commencement of a legal existence being thus shown, it will be presumed that the corporation continued to exist, and to perform its duties, until the contrary is alleged: *Attorney-General v. Michigan State Bank*, 2 D. 359.

46. And where, in addition to this, the plea contained allegations designed to show either a continued existence of the corporation down to the filing of the information, or that the state was estopped from insisting upon forfeiture of the corporate franchises for causes which arose prior to a certain period, it was held that these allegations were surplusage, and on motion they were ordered to be struck out: *Ibid.*

(d) *Replications.*

47. A replication in *quo warranto* proceedings is not chargeable with duplicity for stating several distinct facts that are all aimed to make out the one ultimate fact of a violation of corporate duty, urged as a ground of forfeiture of the charter of incorporation: *Coon v. Plymouth P. R. Co.*, 81 M. 178.

48. The alternative statement in a replication, that the corporation respondent "did wilfully or negligently so manage their affairs that," etc., is not material when the facts set up are sufficient of themselves to show it: *Ibid.*

49. Where a replication not only avers that the respondent company did not keep their plank-road in lawful repair, but also that the directors did not, the latter averment is of no legal consequence unless it was in such a way the duty of the directors that the company, on information, would be responsible for their failure; in that case the averment would be proper: *Ibid.*

50. A replication which, to show that de-

fendants usurp the franchise of banking, avers that certificates issued by them are in the similitude of bank-bills, and also that they are issued with intent to be put in circulation as money, is double: *People v. River Raisin & L. E. R. Co.*, 12 M. 389.

51. An information in the nature of a *quo warranto* involved the legality of the organization of a township. The plea alleged its organization after due preliminaries. The replication denied the legality of the proceedings on the ground that the petition for its organization was not signed by the required number of freeholders. *Held* that, if the objection relied upon was that those who did sign were not freeholders, it should have been distinctly set forth in the replication, and permission was given to amend it: *Attorney-General v. Page*, 38 M. 286.

52. An information in *quo warranto* proceedings charged official misconduct and neglect of duty. The plea denied the charge. A replication was filed which merely reiterated the charges contained in the information, without specifying the acts of neglect and misconduct relied upon. It seems that such a replication is open to demurrer: *Dullam v. Willson*, 53 M. 392.

(e) Demurrers.

53. Where an information in the nature of a *quo warranto* is filed under H. S. § 8635, and charges individuals with the wrongful assumption of corporate powers, a joinder in demurrer to a plea of incorporation leaves the legal incorporation of the defendants the only question in issue. But where it is filed under § 8646, and is aimed at corporate delinquencies, it admits the corporate existence, and the corporation is duly made a party, and under the admission made by the demurrer it must be deemed to be lawfully incorporated unless there are reasons to the contrary connected with the act of incorporation: *Nelson v. McArthur*, 38 M. 204.

54. On demurrer to the replication a merely formal defect in the plea cannot be noticed: *People v. Jackson & M. P. R. Co.*, 9 M. 285.

55. Where the respondent does not demur to the replication, but pleads over, defects of form will be disregarded: *People v. Miller*, 16 M. 56.

56. A plea setting up a private relator's incapacity to hold the office sued for — that of county superintendent of the poor — because he, being a supervisor, is forbidden by statute to hold such office, raises a distinct issue, and requires a reply; and, if generally demurred

to, being good in substance, it entitles respondent to judgment: *Vrooman v. Michie*, 69 M. 42.

57. An election was determined by lot, the vote being tied. *Quo warranto* proceedings were instituted for the office. The plea set up an equality of votes, and, being demurred to, this fact was admitted. *Held* that, on overruling the demurrer, the relator could not be allowed to plead the invalidity of votes cast for respondent: *Evans v. Sutherland*, 41 M. 177.

IV. EVIDENCE.

58. Where, on information in the nature of a *quo warranto*, the state calls upon an individual to show his title to an office, he must show the continued existence of every qualification necessary to the enjoyment of the office. The state is bound to make no showing, and the defendant must make out an undoubted case: *People v. Mayworm*, 5 M. 146.

59. The burden is on the respondent to justify his own title — that of the relator being a collateral issue; and a judgment of ouster will be rendered against a respondent who shows no title, whether the relator's title prevails or not: *Keeler v. Robertson*, 27 M. 116.

60. In a contested election case the official majority establishes a *prima facie* right to the office; and it will require, to overcome it, a finding of the jury showing the number of illegal votes received by each party: *Harbaugh v. Cicotte*, 33 M. 241.

61. A relator can take nothing by reason of any statement of facts which has not been found by the jury or admitted by the attorney-general as well as by the respondent: *People v. Molitor*, 28 M. 341.

62. In the case of tenure by appointment the relator has the burden of showing his own title affirmatively; it cannot be shown by respondent's default or agreement: *Frey v. Michie*, 68 M. 323 (Jan. 26, '88); *Vrooman v. Michie*, 69 M. 42.

63. A relator whose claim to the office in question depends upon an appointment from a certain board cannot controvert respondent's title on the ground that the appointing power was never vested in the board: *Ibid.*

V. PRACTICE.

(a) In general.

64. The fact that an information was filed by the attorney-general as on the relation of a claimant to an office, without the knowledge or authority of such relator, will not entitle him

to have the information dismissed on motion. But the court will allow him, at his option, to withdraw from the proceeding: *People v. Knight*, 13 M. 230.

65. An information to try the right to a public office will not be dismissed on the ground that the office has expired since information filed. To oust the incumbent is not the sole object of the proceeding; but, under the statute, if he is found guilty of the intrusion, a fine may be imposed and costs recovered; and if the relator claims the office, and is found entitled to it, he may recover damages: *People v. Hartwell*, 12 M. 508.

66. The statute which authorizes the attorney-general to enter a rule requiring the defendants to plead to the information within twenty days after service is enacted for his benefit and to enable him to expedite the proceedings. He cannot be defaulted for failure to enter it: *People v. De Mill*, 15 M. 161.

67. When a default is entered in *quo warranto*, no issue of fact can be framed till the default is set aside: *People v. Pratt*, 16 M. 65.

68. Where a stipulation signed by relator and respondent was filed previous to a default, but afterwards signed by the attorney-general, held that, as it would only be admissible as evidence upon a proper issue, the entry of the default might operate as a withdrawal of it; and the subsequent signature of the attorney-general could not of itself operate to open the case or hold respondent to the agreement: *Ibid*.

69. No stipulation can be regarded in a proceeding in the nature of a *quo warranto* unless signed by the attorney-general: *People v. Pratt*, 15 M. 184; *Crawford v. Molitor*, 23 M. 341. None but he can bring error: 56 M. 27.

70. On *quo warranto* to try the right to a public office the attorney-general has control of the proceedings, and notice of hearing must be in his name: *People v. Pratt*, 14 M. 383.

71. *Quo warranto* cases sent from the supreme court to the circuit for trial may be noticed for hearing before the report of the proceedings in the circuit court is filed—the case being regarded as having always been in the supreme court: *People v. Kopplekom*, 16 M. 61.

72. The practice in reviewing trials upon issues in *quo warranto* cases, not being provided for by statute or rule of court, must be governed by that at common law: *People v. Sackett*, 14 M. 243.

73. Where an issue under proceedings in the nature of a *quo warranto* has been sent down for trial, the case remains throughout as an original cause in the supreme court; and

the verdict and proceedings on the trial, when certified up, will be subject to the same rules as apply in any court when judgment is moved for on a *nisi prius* record: *Keeler v. Robertson*, 27 M. 116.

(b) *Venue; trial of issue.*

74. On information for usurpation of an elective county office, the issues will be sent for trial to the county in which the election took place, unless such a showing is made for change of venue as is required in other cases: *People v. Cicotte*, 15 M. 326.

75. H. S. § 8644, which authorizes an issue to be sent to such county as the supreme court may direct, refers only to issues arising on the question of damages for the detention of the office, and not to those referring to the office itself: *Ibid*.

76. When an issue in *quo warranto* is sent down to the circuit court to be tried, the parties cannot be deprived of a jury against their consent: *People v. Doesburg*, 16 M. 133.

77. In *quo warranto* upon a contested election it is held proper to submit to the jury special questions as to whether certain alleged illegal voters voted at the election, for whom they voted, and whether they were legally entitled to vote: *Harbaugh v. Cicotte*, 33 M. 241.

78. A witness testified that he was confident certain persons voted a certain ticket. Held admissible: *Ibid*.

79. Whether a voter had been "duly registered," or was a "legal voter," are proper special questions to submit to a jury in a contested election case. The objection that it requires the jury to pass upon a question of law is not valid: *Ibid*.

(c) *New trials.*

80. A motion for a new trial in a *quo warranto* case should be made at the term at which the report of the trial is filed, where there is ample time to make it before the close of the term: *Coon v. Plymouth P. R. Co.*, 32 M. 248.

81. A new trial may be granted after a trial on *quo warranto* upon the same grounds and on the same showing as in civil cases generally: *People v. Sackett*, 14 M. 243.

82. When issues are sent down to the circuit court to be tried, a refusal to grant a continuance will be no ground for a new trial, unless it is made to appear affirmatively that the party asking it has been improperly deprived thereby of material testimony: *People v. Sackett*, 14 M. 320.

83. If a new trial can be granted at all on the ground that the verdict was against evidence when the judge who tried the case certifies that he was satisfied with it, it can only be when from the evidence reported there can be no doubt of the impropriety of the verdict: *Ibid.*

84. Where issues framed in the supreme court are sent to one of the circuit courts for trial, the circuit judge should make report of the trial, embracing sufficient of the proceedings to show the bearing of any legal rulings made by him to which exception was taken, that the parties may have such rulings reviewed on motion for a new trial. The motion cannot be heard on affidavits as to what the proceedings were: *People v. Sackett*, 14 M. 248.

85. If a party moves for a new trial on the ground that the verdict was against evidence, the judge must report the evidence in full, and also whether the verdict upon the evidence was satisfactory to him. And he should fix a time for settling his report, and cause notice thereof to be given to the parties that they may be present: *Ibid.*

VI. JUDGMENT.

86. A verdict finding only part of the facts necessary to decide the issue will be regarded as a special verdict; and, if there be no general finding, no judgment can be entered, and the case must be retried: *People v. Doesburg*, 17 M. 135.

87. Where an issue of fact in a *quo warranto* case has been sent down for trial by jury, and the circuit judge has not certified the evidence with his report of the trial, this omission is no valid objection to the entry of final judgment where the judge was not required to certify it by the order sending the case down: *Coon v. Plymouth P. R. Co.*, 32 M. 248.

88. Proceedings by *quo warranto*, begun in the circuit court, for the office of alderman were dismissed below for want of jurisdiction upon a finding which did not show how many votes were cast, or how many for either party, or that either received more than the other, and which recited the acts of the election inspectors without deciding upon their accuracy. *Held*, that the finding was not full enough to justify final judgment in the supreme court: *Cooley v. Ashley*, 43 M. 458.

89. Upon respondent's default, where the information is filed on relation of the claimant to a public office, the court will render judgment of ouster against respondent, but

cannot adjudge relator entitled to the office: *People v. Connor*, 13 M. 238.

90. Although the pleading demurred to be defective, judgment goes against the party whose pleading was first defective in substance: *People v. Hartwell*, 12 M. 508.

91. The rule that judgment on demurrer must be given against the party who commits the first fault in the pleadings applies only to errors of substance: *People v. Miller*, 16 M. 56.

92. The admissions in a respondent's plea are conclusive against him, and, if they show him not entitled to office, will maintain a judgment of ouster against him; but no judgment can be rendered for the relator thereon, if there has been no trial or finding upon facts: *Crawford v. Molitor*, 23 M. 341.

93. The imposition of a fine for usurpation of office is in the discretion of the court: *People v. Miller*, 16 M. 205.

94. In a proceeding to determine the title to the office of supervisor, the only questions raised being questions of fact, which have all been found for the relator, judgment of ouster is granted with costs: *Pruden v. Denton*, 35 M. 305.

95. Whichever party prevails upon an information filed in the circuit court by a private relator to try title to an office, the judgment does not estop the people: *Vrooman v. Michie*, 69 M. 42.

96. A corporation that had usurped certain franchises, but not in bad faith, was merely ousted therefrom, with a nominal fine and costs: *Stewart v. Father Matthew Society*, 41 M. 67.

97. No costs are awarded against a respondent who was not in possession of office when the information to try the right thereto was filed: *People v. Lord*, 9 M. 237.

98. The question of the boundary line between two cities will not be determined on *quo warranto* where it is not necessarily raised upon the record, and where neither city is implicated in the proceeding: *People v. Hatch*, 60 M. 229.

RAILROADS.

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VII. LIABILITY FOR FIRES.

VIII. LIABILITY FOR ACTS AND CONDUCT OF OFFICERS AND AGENTS.

IX. LIABILITY FOR LABOR DEBTS.

X. STREET RAILWAYS.

That railroad companies cannot engage in banking, see CORPORATIONS, § 119.

As to the powers and capacities in Michigan of railroad companies incorporated elsewhere, see CORPORATIONS, §§ 178, 182-188.

Grants of public lands to railroads, see PUBLIC LANDS, IV.

Taxation of railroad companies and of stock therein, see TAXES, II, (b).

As to service of process, etc., upon railroad

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companies, see PROCESS, §§ 53-56; GARNISHMENT, §§ 100, 101; APPEAL, §§ 864, 865.

Levy of execution against railroad companies, see EXECUTIONS, § 55.

As to offence of wilfully endangering lives of employees, etc., see CRIMES, § 203.

I. CHARACTER AND ORGANIZATION.

(a) *Their public character.*

1. In legal contemplation a railroad is neither a public common nor a public highway: *Williams v. M. C. R. Co.*, 2 M. 259.

2. Although railroad companies receive tolls as compensation for carrying persons and property, they are to be deemed public rather than private corporations, the legislative purpose in creating them being to benefit the public: *Swan v. Williams*, 2 M. 427.

3. Railroads are often termed public highways, because they accommodate the public travel and are regulated by law so as to exclude partiality in their accommodations; but, when in private hands, the resemblance to ordinary highways is fanciful, and they are not a public purpose in such sense that the taxing power may be exercised to help build them: *People v. Salem*, 20 M. 452; *Bay City v. State Treasurer*, 23 M. 499. See *infra*, § 56.

4. Railroads, though not strictly highways, are such within the meaning of U. S. Rev. Stat. § 2477, which grants the right of way for the construction of highways across the public lands: *Flint & P. M. R. Co. v. Gordon*, 41 M. 420.

5. Though a railroad corporation is private, its work is public: *Pine Grove v. Talcott*, 19 Wall. (U. S.) 666.

(b) *Organization of companies.*

1. Legislation; charters.

6. The legislative council of the territory had power to pass the act of March 7, 1834, incorporating the Detroit & Pontiac Railroad Company: *Mercer v. Williams*, W. 85.

7. And said act, in so far as it authorized the appropriation of private property for the purposes contemplated in the act, without the owner's consent, was not repugnant to the constitution of the United States or to the ordinance of 1787: *Swan v. Williams*, 2 M. 427.

8. Act 195 of 1871 (C. L. 1871, §§ 2405-2460), entitled "An act to revise the laws providing for the incorporation of railroad companies," held constitutional against the objections that its title was not sufficiently specific, and that

its provisions were incoherent: *Continental Improvement Co. v. Phelps*, 47 M. 299.

9. Said statute superseded the general railroad law of Feb. 12, 1855 (C. L. 1871, §§ 2297-2365), and the acts amendatory thereto: *Ibid*.

10. The general railroad law of 1873 (H. S. §§ 3313-3397) is not unconstitutional on the ground that the title provides for more than one object, its object being to bring together the legislation concerning the creation and management of railroads: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456.

11. The act of Feb. 13, 1855, changing the name of a certain railroad company to the Detroit & Milwaukee Railroad Company, and authorizing it, for the purpose of forming a continuous line, to acquire the franchises of another company, cannot be held to have been unconstitutionally adopted (see CONSTITUTIONS, § 526): *Attorney-General v. Joy*, 55 M. 94.

12. Nor is said act of Feb. 13, 1855, repugnant to Const., art. 15, § 8, which declares that the legislature shall pass no act renewing or extending a special act of incorporation; nor does it create a new corporation in violation of Const., art. 15, § 1: *Ibid*.

13. Act 96 of 1859 (H. S. §§ 3406-3408), entitled "An act in relation to mortgages against preferred stock in, and the delivery of goods by, railway companies," held not void for duplex title, or as having the effect to create new corporations with the old chartered powers: *Ibid*.

14. Said act was not repealed by the amendment of the general railroad law by the act of 1873 (Sess. L., p. 83) or by the general revision of that law in 1873; those acts refer to companies organized under the general railroad law: *Ibid*.

15. Act 80 of 1907 (C. L. 1871, § 2361), amending C. L. 1857, ch. 67, by adding a new section concerning construction of road and assessment of stock, held constitutional (see CONSTITUTIONS, §§ 563, 618): *Swartwout v. Michigan Air Line R. Co.*, 24 M. 389.

16. It is provided by section 5 of the charter of the Michigan Central Railroad Company (Laws 1846, p. 43) that no railroad or railroads from the eastern or southern boundary of the state shall be built, constructed or maintained, or shall be authorized to be built, constructed or maintained, by or under any law of this state, any portion of which shall approach, westwardly of Wayne county, within five miles of the line of said railroad, as designated in said act, without the consent of said company; and that no railroad or railroads shall be authorized or constructed which

shall commence within twenty miles of the city of Detroit and extend to Lake Michigan or the southern boundary of the state, the line of which shall, on an average, run within twenty miles of the main line of said Michigan Central Railroad; *provided*, that said section shall not be construed to restrict or prevent the construction of public roads, or canals, or railroads, or private ways, under, above or across the road of said company, when deemed expedient, but so as not unnecessarily to obstruct the same. It was held that the prohibition contained in the first subdivision of said section does not apply to a chain or series of railroads, one of which might reach one of the prohibited points, and another of which might reach the other point, but only to an entire road in itself extending to each point. Held, also, that the proviso at the end of the section was not limited in its terms by the general language of the first subdivision, and that its intent was not to prohibit the construction of such roads only as did not connect with said southern or eastern boundary: *M. C. R. Co. v. Michigan Southern R. Co.*, 4 M. 361.

2. Preliminaries; estoppel to dispute organization.

17. Where, under C. L. 1871, § 2297, the affidavit as to the amount of stock subscribed was not sworn to by a sufficient number of directors, the irregularity was cured by the subsequent filing of an affidavit sworn to by the requisite number: *Monroe v. Fort Wayne, J. & S. R. Co.*, 28 M. 272.

18. Where a railroad company is organized under a special charter, proof of the charter and of user under it is sufficient to establish a *prima facie* right in the corporation to sue for the recovery of subscriptions to its stock; and this *prima facie* case is not to be disputed by an individual in an action where the question only arises collaterally, and the state, as the party chiefly concerned, cannot be heard by its counsel. The ruling should be the same where an attempt has been made to organize a corporation under a general law, and the question is one of exact regularity and strict compliance with the law: *Swartwout v. Michigan A. L. R. Co.*, 24 M. 389.

19. A subscriber to the capital stock of a railroad company cannot set up in defence to an action on his subscription any mere irregularity in the organization of the company, provided it be a corporation *de facto*, proceeding without interference of the state in the construction, completion and maintenance of

its road: *Monroe v. Fort Wayne, J. & S. R. Co.*, 28 M. 272.

20. Where a subscription to a railroad company recognizes the corporation, the regularity of the preliminary steps organizing the company are not open to dispute in an action upon such subscription: *Parker v. Northern Central M. R. Co.*, 33 M. 23.

21. The legality of the incorporation of a railroad company cannot be inquired into as between the parties in a collateral action by it upon a transferable aid contract whereof it is equitable assignee: *Toledo & A. A. R. Co. v. Johnson*, 55 M. 456.

22. A railroad company that has completed its road and is engaged in operating it must be deemed, in an action brought by it upon an aid contract, a corporation *de facto*, and defendant cannot dispute its legal organization: *Wilcox v. Toledo & A. A. R. Co.*, 43 M. 584.

(c) Consolidation.

23. In consolidating two or more railroad companies, every requirement of the statute must be strictly complied with: *Peninsular R. Co. v. Tharp*, 28 M. 506; *Mansfield, C. & L. M. R. Co. v. Drinker*, 30 M. 124.

24. The first step in consolidation proceedings is the making of an agreement by the directors of the respective companies (C. L. 1871, § 2346; H. S. § 3343); and this precedes any steps to convene the stockholders. The stockholders' meetings consider and determine the ratification of an agreement, not the acceptance of a proposition: *Tuttle v. Michigan Air Line R. Co.*, 35 M. 247.

25. Where no notice of a meeting of directors to act upon a proposed consolidation is required by the statute, and it is not shown that the articles of association or the by-laws provide the manner of notice or require that there should be any, and a quorum is present, all voting affirmatively, as shown by the record, such meeting is legally held, and its action valid, without proof of notice to the absent members: *Wells v. Rogers*, 60 M. 525.

26. Unless the notices convening stockholders to ratify a consolidation agreement follow the requirements of the statute, the proceedings at the meetings are invalid. The object of the meetings must be stated in the notices, and the notices must be published for the statutory time: *Tuttle v. Michigan Air Line R. Co.*, 35 M. 247.

27. Without proof of notice of a stockholders' meeting to ratify a consolidation agreement, it does not appear that a legal meeting has been held: *Rogers v. Wells*, 44 M. 411.

28. The notices of the meetings of the stockholders of two railroad companies to ratify an agreement for consolidation are to be separate, should be signed by the secretaries separately, and each need be published only in the counties through which the particular road runs: *Wells v. Rogers*, 60 M. 525.

29. If the publication of notice to stockholders of a meeting to bring about consolidation is not shown by affidavit as allowed by H. S. § 3317, it should be proved by some one connected with the newspapers, or who has seen the notices and can identify them: *Brown v. Dibble*, 65 M. 520.

30. The merger does not take place until the consolidation agreement is made and ratified and a duplicate thereof filed in the office of the secretary of state; before that there can be no valid action by the new company: *Peninsular R. Co. v. Tharp*, 28 M. 506; *Mansfield, C. & L. M. R. Co. v. Drinker*, 30 M. 124.

31. And any attempted election of directors of the consolidated corporation, prior to such filing, is unwarranted and ineffectual: *Mansfield, C. & L. M. R. Co. v. Drinker*, 30 M. 124.

32. Nor can the consolidated company, before such filing, make valid assessments upon subscription to the stock of one of the original corporations; the conditions of the statute, from which alone it derives its corporate existence, are imperative: *Peninsular R. Co. v. Tharp*, 28 M. 506.

33. Under the general law of 1855 (C. L. 1871, § 2348) the rights, property and franchises of the constituent companies did not vest in the consolidated company until the election of a board of directors for the latter; and until the consolidation was thus perfected the new company could not, by virtue of any rights acquired by the consolidation proceedings merely, maintain a suit upon a demand belonging to one of the former companies: *Mansfield, C. & L. M. R. Co. v. Drinker*, 30 M. 124.

34. In an action upon a subscription to a specified railroad company, evidence was given tending to show that the company had been consolidated with another, and that business had since been done in the name of the consolidated corporation by which suit was brought. *Held*, that it was fair to presume, in the absence of a contrary showing, that the new organization had elected a board of directors, whereby the right to the subscription had been transferred to it: *Detroit, L. & M. R. Co. v. Starnes*, 38 M. 698.

35. Where, on the mere ground of a right by succession under the statute, a consolidated corporation sues to recover assessments upon a subscription to the capital stock of one of

the original corporations, or upon an aid subscription to one of such companies, it is essential to a recovery that a consolidation conforming to the statute be proved; it is not enough that the new company is a corporation *de facto*, and entitled as such to enforce contracts as against parties who have dealt with it. And defendants, unless estopped by acquiescence, may assail the validity of the consolidation proceedings: *Mansfield, C. & L. M. R. Co. v. Drinker*, 30 M. 124; *Tuttle v. Michigan Air Line R. Co.*, 35 M. 247; *Brown v. Dibble*, 65 M. 520.

36. To establish the legality of a consolidation between a Michigan company and an Ohio one, it should appear that the latter was legally incorporated, and that it could lawfully unite with a Michigan company: *Brown v. Dibble*, 65 M. 520.

37. A certificate signed only by the railroad commissioner and by a person not a member of the board, the two describing themselves as chairman and secretary of the "board of railroad consolidation" (a term not used by the statute), is not evidence of the approval required by H. S. § 3844 as amended by act 174 of 1888 (Pub. Acts, p. 187): *Ibid.*

38. Where recovery is sought from a consolidated railroad company for a cause of action that arose originally against one of its constituents, the declaration must aver against what company it arose, and aver such facts as will subject the new company to liability upon it: *Marquette, H. & O. R. Co. v. Langton*, 32 M. 251.

39. In an action brought by the assignee of a subscription for railroad stock to recover the amount of the subscription, the declaration alleged the consolidation of the company in which the stock was taken, and the plaintiff sought to introduce in evidence the articles of the original and the consolidated companies. *Held*, that the objection that they were "incompetent, irrelevant and immaterial" was not sufficiently specific: *Rodgers v. Wells*, 44 M. 411.

40. Every railroad corporation has its existence and domicile within the territory of the sovereignty which creates it; and when two or more corporations created in different sovereignties are consolidated into one, the component parts bring to the new organization the powers and privileges possessed by each, however different, and the consolidated company exercises in each jurisdiction only those powers that the constituent part formerly exercised there. And where roads lying in different states are consolidated, the legislature of each state continues to legislate as before in

respect to so much of the road as has always been within its jurisdiction, and cannot follow the consolidated company outside of the state. But the consolidated company stands, in each state, in the place of the corporation to whose rights it succeeded there: *Chicago & N. W. R. Co. v. Auditor-General*, 53 M. 79.

41. The general railroad law, in permitting the consolidation of railroad companies within the state with others beyond its boundaries, contemplates leaving the domestic company in its original position as to stock and loans, and annexing to its capital and loans those additions which are most proportional to the original amounts: *Lake Shore & M. S. R. Co. v. People*, 46 M. 193.

42. A railroad company's liability for injuries from negligence attaches to a new company into which it is merged by consolidation: *Batterson v. Chicago & G. T. R. Co.*, 53 M. 125.

43. Consolidation of plaintiff with another company, pending an action for an assessment upon subscriptions to stock, does not defeat the action; the cause of action passes to the new company: *Swartwout v. Michigan Air Line R. Co.*, 24 M. 389.

Consolidation does not defeat condemnation proceedings: See *infra*, § 151.

(d) *Re-organization; transfer.*

44. Under H. S. § 3406, those who acquire the property and franchises of a railway company on foreclosure sale take the road free from all debts and obligations not secured by prior liens or encumbrances, and the new stockholders succeed to the charter powers of the debtor company under the same conditions and with the same rights as if they had been the original stockholders of the road burdened with no debts; nor will any common-law action lie against them for any of the debts of the former company: *Cook v. Detroit, G. H. & M. R. Co.*, 43 M. 349.

45. The purchasers on execution sale of the property and franchises of a street railway company may exercise such franchises and collect tolls the same as the corporation: *McKee v. Grand Rapids & R. L. Street R. Co.*, 41 M. 274.

46. Where the assets of a railroad company are sold in bankruptcy, and the purchaser of its assets transfers them to another who organizes a new company, and in the papers expressly recognizes the new company as assignee from him of the assets, this is a sufficient assignment to enable the new company to bring suit upon obligations given to the old company: *Wilcox v. Toledo & Ann Arbor R. Co.*, 43 M. 584.

II. AID TO RAILROADS; SUBSCRIPTIONS.

(a) *Municipal-aid bonds.*

47. Legislation authorizing municipal corporation to vote taxes and pledge their credit in aid of the construction of railroads by private companies is unconstitutional; and, therefore, a township will not be compelled to execute and issue bonds in accordance with a resolution adopted by it in favor of a company which subsequently constructed its road in reliance thereupon: *People v. Salem*, 20 M. 452.

48. And, for the same reason, where a city, under act 45 of 1869, had issued bonds in aid of a railroad and deposited them with the state treasurer, who, on demand therefor, declined to deliver them up to the proper authorities of the city, such delivery was compelled by *mandamus*: *Bay City v. State Treasurer*, 23 M. 499.

49. Municipal-aid bonds deposited with the state treasurer under a law held unconstitutional are in his official custody until delivered up, and he is responsible for their safe-keeping and return to the makers when demanded, and a *mandamus* lies to compel such return when refused upon a reasonable demand: *La Grange v. State Treasurer*, 24 M. 468.

50. The fact that a city has received in exchange for void bonds, issued under a statute authorizing aid to railroads, the bonds of the railroad company in whose favor the city bonds were issued, does not make valid the unauthorized obligations of the city: *Thomas v. Port Huron*, 27 M. 320.

51. A resident owner of real and personal estate subject to taxation can maintain a bill to enjoin the issue of railroad-aid bonds under a resolution of the township board, such bonds being unlawful: *Curtenius v. Grand Rapids & I. R. Co.*, 37 M. 583.

52. Creditors who have received township railroad-aid bonds in payment cannot retain them and question their validity at the same time; if they wish for a payment in cash they must give up the bonds: *Michigan Air Line R. Co. v. Mellen*, 44 M. 321.

53. Township-aid bonds were delivered by a railroad company to one of its directors to pay for depot buildings which he had put up and agreed to convey, but did not do so. *Held*, on a bill for accounting, that he should be charged with the bonds: *Ibid*.

54. A judgment against a township upon railroad-aid bonds precludes inquiry into the grounds upon which it was rendered, but it

does not bind another township that was not made a party to the action; nor can it sustain a claim for apportionment against such other township where the transaction upon which it was based did not become a binding agreement until after the other township had been set off from the one which issued the bonds: *Pierson v. Reynolds*, 49 M. 224.

55. A charter provision empowering the common council to "issue new bonds for the refunding of bonds and evidences of debt already issued," authorizes the issue of refunding bonds for railroad-aid indebtedness that has passed into judgment: *Port Huron v. McCall*, 40 M. 565.

56. The federal courts hold that statutes authorizing municipal aid to railroads are constitutional, and those courts permit recovery upon bonds issued prior to the decision cited *supra*, § 47: *Pine Grove v. Talcott*, 19 Wall. (U. S.) 666; *Taylor v. Ypsilanti*, 105 U. S. 60; *New Buffalo v. Cambria Iron Co.*, 105 U. S. 73.

57. The rights of the holder of municipal bonds issued in aid of a railroad are not determined by the law as expounded by the supreme court of the state at the time he received them; even if not a holder for value, he is entitled to whatever rights the railroad company had by virtue of its contract with the municipality: *New Buffalo v. Cambria Iron Co.*, 105 U. S. 73.

58. Under the act of March 22, 1869, providing that a municipality voting aid to any railroad "shall, within sixty days after the question of aid is determined, issue its coupon bonds for the amount so determined," bonds issued after the sixty days and ante-dated are not invalid; the statute is simply permissive: *Chickaming v. Carpenter*, 106 U. S. 663.

59. Municipal bonds voted in aid of a railroad company are rightly delivered to a new or consolidated company into which the former has been merged: *New Buffalo v. Cambria Iron Co.*, 105 U. S. 73; *Chickaming v. Carpenter*, 106 U. S. 663.

60. That municipal bonds were issued to a railroad company as a donation, and not as a subscription to stock, does not affect the legal principles governing them: *New Buffalo v. Cambria Iron Co.*, 105 U. S. 73.

61. In an action on municipal bonds issued under authority of law, plaintiff need not aver performance of any of the requisites necessary to give them validity; but it is for the defendant to show, if it exists, the want of such validity: *Lincoln v. Cambria Iron Co.*, 103 U. S. 412.

(b) *Voluntary subscriptions.*

62. A railroad-aid subscription signed on Sunday is *prima facie* void; and if the railroad company has not acted on it in good faith and without knowledge of the defect, it can only become valid by some distinct act of the subscriber upon a week-day in delivering it, or authorizing it to be delivered: *Saginaw, T. & H. R. Co. v. Chappell*, 56 M. 190.

63. A voluntary subscription in aid of a railroad is not defeated by the fact that the municipal and individual aid and stock subscriptions do not amount to \$3,000 per mile; the proviso of C. L. 1871, § 2298, merely refers to levying assessments upon stock subscriptions: *Wright v. Irwin*, 35 M. 347.

64. A promise to contribute in aid of a proposed railroad implies, as a condition, in the absence of express conditions, that the road shall be constructed and operated; and if, relying upon such promise, this is done in a reasonable time, where no time is fixed, the promise becomes binding: *Stevens v. Corbitt*, 33 M. 458; *Michigan, M. & C. R. Co. v. Bacon*, 33 M. 466.

65. The fact that a company was organized to build the road, or that even in the absence of such a promise the road would have been built, does not defeat the promise: *Stevens v. Corbitt*, 33 M. 458.

66. A promissory note given as a voluntary contribution in aid of a railroad will not be held invalid for want of consideration where the proposed road has been constructed and put in operation: *Wright v. Irwin*, 35 M. 347.

67. Where a railroad-aid contract is conditioned on the payment of a stated sum when the road is *completed*, the word "completed" does not have the same force as it would in a contract for construction; the purpose of the condition is accomplished when the road is ready for regular business: *Tower v. Detroit, L. & L. M. R. Co.*, 34 M. 328.

68. In an action on an agreement to pay a certain sum of money to a railroad company in a specified time after the cars begin to run, evidence to show what would be a reasonable time for completing the road is inadmissible: *Toledo & A. A. R. Co. v. Johnson*, 55 M. 456.

69. Defendant promised to pay a certain sum in aid of the construction of a railroad, provided the cars should run upon said road within one-third of a mile of a certain town within eighteen months from the date of the promise. *Held*, that the condition did not require that the road-bed and track, and the rolling-stock and equipments, should be built and perfected within the eighteen months to

the point named, but merely that the road and stock should be so far constructed that cars could be run over the road, and should actually make such run within the time stated: *Pontiac, O. & P. A. R. Co. v. King*, 68 M. 111 (Jan. 5, '88).

70. There may be such a change in the location of the line of the road as would warrant the withdrawal of an aid-promise, where the promisor would lose the advantages he expected to accrue to him from the building of the road. The evidence in a particular case *held* not to sustain such a defence: *Michigan, M. & C. R. Co. v. Bacon*, 33 M. 466.

71. A company's agreement, as the consideration for a subscription, to establish and construct a railroad between two specified points, would not be performed unless the company had a road under its own permanent control covering the entire distance; though it was not necessary that the company itself should literally build the road all the way: *Brown v. Dibble*, 65 M. 520.

72. A promissory note, payable to the treasurer of the Chicago & Canada Southern Railway Company, was made "in consideration of the construction of" the railway through or within half a mile of the village of Dundee "within three years after this date, and the building of passenger and freight depot" at Dundee; and it was made payable "in thirty days after said road and depot are constructed as aforesaid." The articles of incorporation of the railway company named Chicago as one of the *termini*. The track was laid through Dundee, and the depot put up, but instead of extending the road to Chicago it was connected with other routes at a point beyond Dundee, so as to form a through line. *Held*, that the promise was made to afford aid in constructing the road, and was intended to be payable in case of the completion, as agreed, of the portion built, regardless of the failure to extend it to Chicago within three years, as stipulated: *Stowell v. Stowell*, 45 M. 364.

73. Several persons signed a paper reciting that, as A. had proposed to construct a railroad from I. to S., in consideration of the right of way and \$3,000 a mile local subscription, they promised to give their notes to the I. & S. Railroad Company for the amounts set opposite their names. The company was not then organized nor the line of road fixed. In a suit on one of the subscriptions it was *held* that plaintiff might show that, owing to the high lands near the city, it had not been contemplated by the parties that the road would be built to the corporate limits of Ionia, but

that the line of a previously constructed road was to be used for some distance; and that the nature of the ground might be shown as a reason why a particular route could not be chosen: *Detroit, L. & L. M. R. Co. v. Starnes*, 38 M. 698.

74. A promise to pay an existing company, its successors or assigns, a sum of money sixty days after the road is open for traffic may be enforced in its own name by the successor of such company which has completed the road, and to whom the promisee has assigned all its franchises and property, including such franchise. The essence of the agreement is the building and opening of the road: *Michigan, M. & C. R. Co. v. Bacon*, 38 M. 466.

75. Where the consideration of a transferable aid-note given to a railroad company is the benefit to be derived by the maker from the construction of its road, he cannot defend on the ground that the road was built by another company: *Toledo & A. A. R. Co. v. Johnson*, 55 M. 456.

76. A defendant who has promised to pay money one day after the grading is done and the ties are on the ground for the road-bed of a railway between certain points cannot be held liable to another company which, after the road has been abandoned for eleven years, builds a road between those points and uses part of the same line, but does not show that it is the legal assignee or receiver of the former company: *Sickels v. Anderson*, 68 M. 421.

77. A railroad-aid note was given, whereby the makers, in consideration of the building of the V. B. Division of the T. & S. H. Railroad, promised to pay to said railroad company, or order, \$200 in thirty days after notice of its completion. When the note was given the T. & S. H. Company was not in existence, and no company of that name was ever organized, but an independent corporation by the name of the V. B. Division of the T. & S. H. Railroad Company was afterward created with a different purpose from that of the original undertaking. *Held*, that the promisee in the note was the T. & S. H. Railroad Company, and that the V. B. Division, as afterward organized, could not recover upon it without showing that the promisors had consented to the change of scheme, and declaring on the new agreement: *Toledo & S. H. R. Co. v. Lamphear*, 54 M. 575.

78. Successive assignments and deliveries of an aid-note drawn to the order of a railroad company were *held* sufficient to create an equitable assignment of the contract embodied in it, and to authorize the final holder to sue

on it in his own name as equitable assignee: *Toledo & A. A. R. Co. v. Johnson*, 55 M. 456.

79. In an action upon a contract, whereby a specified amount was to be paid upon the completion of a certain railroad, the declaration averred the contract to have been made for a valuable consideration, and the antecedent negotiations out of which the contract grew were relied on as constituting such consideration. *Held*, no error to allow such preliminary negotiations to be very fully disclosed: *Tower v. Detroit, L. & L. M. R. Co.*, 34 M. 328.

80. A railroad-aid note, conditioned on the road's completion to a certain point, may, when it has become absolutely payable, be sued by the payee under the common counts: *Port Huron & S. W. R. Co. v. Potter*, 55 M. 327.

(c) *Subscriptions to stock.*

As to what certificate constitutes stockholder, see CORPORATIONS, §§ 81, 82.

As to transfer of stock, see CORPORATIONS, §§ 42, 45, 46.

Subscription books are evidence of sum subscribed per mile: See EVIDENCE, § 507.

1. In general.

81. Under the general railroad act of 1855 (C. L. 1871, ch. 75), a railroad company was organized, with articles of association which fixed the amount of capital stock, and named five commissioners to open books for subscriptions to the stock. The commissioners, however, never opened such books, but a subscription paper was circulated by an agent appointed by the directors, and defendant subscribed a sum thereon which he subsequently on several occasions offered to pay. *Held*, that the promise was without consideration, and he was not liable thereon: *Shurtz v. Schoolcraft & T. R. R. Co.*, 9 M. 269.

82. The commissioners act as a statutory board, and are alone authorized to receive subscriptions. They are not required to recognize or protect any subscriptions not under their own auspices; and such subscriptions cannot prevent other persons taking the entire amount of stock not subscribed by the articles of association, whenever the commissioners shall open books. There is, therefore, no consideration for any other subscription: *Ibid*.

83. Where the general railroad law had provided that subscriptions for stock in a railroad company must be taken upon books

opened by commissioners, it was *held* that subscriptions otherwise made could not be enforced unless made on some actual consideration or agreement binding the company: *Parker v. Northern Central M. R. Co.*, 33 M. 23; *Northern Central M. R. Co. v. Eslow*, 40 M. 222.

84. A subscription paper was headed as follows: "We, the undersigned, in consideration that the Northern Central Michigan Railroad Company shall proceed to the building of said road, hereby agree to pay said company — for which we shall have paid-up stock of the company — the amount set to our names, to be paid 20 per cent. a month, beginning when the work shall have commenced." It was not a subscription to stock taken by commissioners in the mode prescribed by law, and therefore binding on the company. *Held* that, in the absence of any averment in the declaration that the offer it contained was accepted and acted upon, it would not sustain a recovery against subscribers: *Ibid*.

85. Under C. L. 1871, § 2405 (now repealed), subscriptions to capital stock of a railroad corporation could be made only "in the manner to be provided by its by-laws." A subscription made before any by-laws were adopted gave no right to either party; and, where there had been nothing done to create an estoppel, the subscriber was *held* not bound by a by-law made afterwards and adopting his subscription: *Carlisle v. Saginaw, V. & St. L. R. Co.*, 27 M. 315.

86. A preliminary subscription to railroad stock *seems* to be sufficient if it promises contribution to an enterprise which afterwards in the articles the associates proceed to describe with the particularity required by law: *Peninsular R. Co. v. Duncan*, 28 M. 130.

87. Under C. L. 1871, § 2361 (repealed by H. S. § 3397), providing that when the subscriptions, including municipal aid voted, amounted to \$8,000 per mile, the company might elect directors and proceed, etc., *held* that, notwithstanding the subscription was made up in part of invalid (see *supra*, § 47) municipal aid voted, etc., it was sufficient to authorize the company to proceed, etc.: *Swartwout v. Michigan Air Line R. Co.*, 24 M. 389.

88. One who is sued on his subscription for railroad stock may show, in defence, the corporation's failure to obtain the amount of capital stock required by law; for his subscription is on the implied condition that the aggregate amount called for by statute shall be subscribed: *Monroe v. Fort Wayne, J. & S. R. Co.*, 28 M. 272.

89. The statutory requirement with regard to the amount of money that must be sub-

scribed for each mile of road does not apply to parts of the road lying outside the state. In a suit upon a subscription for stock, therefore, it cannot be objected that there is no proof that such amount has been subscribed for the whole of a road that lies partly in another jurisdiction: *Ibid*.

90. An arrangement between the officers of a railroad company and a portion of its subscribers that, if the town in which the latter resided voted a certain amount of municipal aid, such subscribers, upon paying a certain percentage of their subscription, should be released from the balance, was *held* void, being in effect an agreement to release a portion of the subscriptions without authority of law: *Swartwout v. Michigan Air Line R. Co.*, 24 M. 389.

91. Where C. L. 1871, § 2297 (now repealed), says that "thereupon the persons who have subscribed, and all persons who shall from time to time become stockholders in such company, shall be a body corporate," the subscribers intended are not only the parties to the articles of association whose subscriptions are provided for in the same section, but also the subscribers to the preliminary agreement to take shares of the capital stock of the proposed company and pay therefor according to the directors' assessments; and those who have subscribed only the preliminary agreement are *held* liable thereon after the company has been formed and assessment made and payment demanded: *Peninsular R. Co. v. Duncan*, 28 M. 130.

92. Where, according to the law, one has paid his five per cent. upon his subscription to the preliminary agreement to take shares of stock in the proposed railroad company, and it is received and retained by the custodian agreed upon by those who are associated in such agreement, he has acquired the important right to take part in the organization and the choice of directors and the determination of the route, and in shaping the constitution of the company; and he ought not to be able to disaffirm his action at pleasure after other parties have taken a further unquestionably binding action in reliance on his promised assistance. The promises in such an agreement would, when accepted by the organization and action of the company, be enforceable at common law, if the purpose were lawful and beneficial, and if the return called for by the subscriptions could be made to the several promisors: *Ibid*.

93. While the general railroad law supposes that the subscribers to the original agreement for the formation of a railway company will

sign the articles of association also, it neither takes away their rights, nor absolves them from obligations, on account of their failure to observe this formality; but if the corporation is duly formed, the preliminary subscribers are liable on general principles applicable to such undertakings as they have entered into, for the fulfilment thereof, in the absence of any provision of the statute which expressly or by necessary implication relieves them therefrom. The state requires that subscriptions to a certain amount be made to the articles; but if there be other subscriptions to the preliminary agreement it does not follow that they must be also added to the articles, or that, if they are not, the subscribers are released thereby: *Ibid.*

94. Where the declaration in a suit upon a subscription to an agreement to take stock in a railroad company did not expressly aver payment of the five per cent. required by law, but set it forth by way of recital, it was still *held* sufficient in that particular on general demurrer and on special demurrer directed to other defects: *Ibid.*

95. A demurrer to a declaration against one who had not fulfilled his agreement to take stock in a railroad company to be formed, that it did not appear therefrom that the commissioners named in the articles of association of the company for distributing stock in excess of subscriptions had ever assigned any stock to the defendant, was *held* as not well taken, as the commissioners do not assign stock unless in apportioning such surplus, and the original corporators are entitled to what they subscribed for independently of any action by the commissioners: *Ibid.*

96. A railroad company, although a corporation *de facto*, and entitled as such to maintain actions, cannot recover on subscriptions to its stock without showing performance of all those acts which are made by the statute conditions precedent: *Swartwout v. Michigan Air Line R. Co.*, 24 M. 389.

97. A declaration upon a subscription for railroad stock must allege the agreement between the company and the subscriber to be either complete, or to be made so by subsequent acceptance, and the allegation must be proved to sustain the action: *Parker v. Northern Central M. R. Co.*, 33 M. 23.

98. In an action upon a subscription, irregularly made, for railroad stock, possession of the subscription paper by the corporation long after the suit began would not, of necessity, raise the presumption of seasonable liability on it, as if it had been duly delivered to and accepted by the corporation: *Ibid.*

2. Assessments and actions therefor.

99. One who receives a certificate of stock for a certain number of shares at a given sum per share thereby becomes liable to pay the amount thereof when called upon by the corporation or its assignee: *Chubb v. Upton*, 95 U. S. 665.

100. Under the general railroad law of 1855, at least as it stood prior to its amendment in 1857, no levy of assessments could be made until the whole amount of the capital stock specified in the articles was subscribed: *Shurtz v. Schoolcraft & T. R. R. Co.*, 9 M. 289.

101. A consolidated railroad company cannot make valid assessments upon subscriptions to the stock of one of the original corporations until after its articles are filed in the office of the secretary of state: *Peninsular R. Co. v. Tharp*, 28 M. 506.

102. In an action by a corporation to recover an assessment upon subscriptions to stock, the mere fact that the commissioners designated to receive subscriptions had assumed to set apart a division of the railroad for construction, that being by the law the duty of the directors, and that this action was therefore void, is of no consequence when the proper proceedings had afterward been taken by the directors: *Swartwout v. Michigan Air Line R. Co.*, 24 M. 389.

103. Under C. L. 1871, § 2361, for the purposes of an assessment upon subscriptions to stock, either the road was to be regarded as an entirety, or the separate division set apart for construction was to be considered and proceeded with by itself as a whole. An action for an assessment upon such subscription could not be maintained without proof that the necessary subscriptions had been obtained between the two *termini*, or within the required distance from them, of the division designated and set apart: *Ibid.*

104. It was *held* that a subscription to railroad stock, made upon condition "that the line of the road shall be located and built within one mile of the postoffice in the village of Three Rivers," would be assessable when the road should be finally located within one mile thereof, although not yet constructed: *Ibid.*

105. It is no defence to an action to recover an assessment upon subscriptions to stock that stock had been awarded by the commissioners for receiving subscriptions to persons whose names were not on the stock book or to those who had not actually paid in the per cent. required by law on subscribing; one who has received what he subscribed for cannot

complain of an award to those who could not have compelled it: *Ibid.*

106. It was *held* not to defeat an action by a railroad corporation for an assessment upon subscriptions to stock, that, pending the action, the plaintiff consolidated with another company. The cause of action passed to the new company, and the objection, if valid in any form, should have been considered matter in abatement merely, and should have been pleaded accordingly: *Ibid.*

107. A subscriber to the stock of a railroad company, when sued for an unpaid assessment on shares forming part of an increase of the capital stock, cannot defend on the ground that the proceedings to increase the stock were irregular or invalid; he is estopped from disputing them: *Chubb v. Upton*, 95 U. S. 665.

That a valid consolidation must be proved to sustain an action by a consolidated company upon an assessment on stock in one of its constituent companies, see *supra*, § 35.

3. Assignment.

108. Whether stock subscriptions are assignable, *quere*: *Rodgers v. Wells*, 44 M. 411.

109. They are if the amount due thereon has been regularly called in by assessment, so that it stands as a liquidated demand that may be sued; but the assignment would be subject to equities and could not deprive the debtor of any stockholder's rights: *Wells v. Rodgers*, 50 M. 294.

110. One who declares upon an assignment to him by a consolidated company of a claim for an amount due on a subscription to stock in one of the original companies must show that the statutory conditions to consolidation were substantially observed; and he cannot recover on proof that the claim was assigned by one of the constituent companies to his assignor, unless he has declared on such an assignment: *Rodgers v. Wells*, 44 M. 411.

111. In an action by the assignee of a claim for an amount unpaid on a stock assessment the defendant, if a stockholder in the assigning company, may have a right to know whether or not he is to be sued by a purchaser for value, and he can therefore show the consideration of the assignment: *Wells v. Rodgers*, 50 M. 294.

III. PROCUREMENT AND USE OF RIGHT OF WAY.

(a) *Right of way in general.*

112. Property of individuals, taken by railroad corporations for the purpose of construct-

ing their roads, is, in legal contemplation, taken not for *private* but for *public* use. The tenure of the corporations in the land is in the nature of a trust for public use, subject to the supervision of government: *Swan v. Williams*, 2 M. 427.

113. Certain lands lying east of the village of Hillsdale were, in the year 1838, taken and appropriated by the state for the use of the Michigan Southern Railroad, which was completed and brought into use over said lands in 1844; and in 1846 all the right, title and interest of the state in the railroad was transferred to the Michigan Southern Railroad Company. It was *held* that, under the law of 1838, providing for the acquisition of lands for the purposes of railroads, and the settlement of claims for the appropriation of property for such uses, the lands in question vested in the state, whether the claim for damages for their appropriation had been adjudicated upon and satisfied or not; that the transfer of the road by the state to the company imposed upon the latter no obligation to pay said damages, and that the company took such lands relieved of any claim or lien for such claim: *People v. Michigan Southern R. Co.*, 3 M. 496; *Smith v. McAdam*, 3 M. 506.

114. The statutes providing for the construction of the state railroads, and constituting a board to which claims might be presented for lands taken, considered: *People v. Michigan Southern R. Co.*, 3 M. 496.

115. Lands taken by the state for its railroads passed by the sale of the roads to the purchasers, notwithstanding the owners of the lands had failed to present their claims and obtain compensation: *Ibid.*; *Smith v. McAdam*, 3 M. 506.

116. The Michigan Central Railroad Company is the legal owner of its road by purchase and grant from the state, and has by its charter the entire and exclusive right of possession and control of such road: *William v. M. C. R. Co.*, 2 M. 259.

117. An owner cannot, by dedicating land to public use, affect a railroad company's existing right of way thereover: *Detroit v. Detroit & M. R. Co.*, 23 M. 173.

(b) *Procurement by grant or agreement.*

118. Under U. S. Rev. Stat. § 2477 a railroad company is entitled to a grant of the right of way over public lands, and the construction of the road is a sufficient consideration for such grant: *Flint & P. M. R. Co. v. Gordon*, 41 M. 420.

119. No patent is needed in such case where the grant is accepted by the construction of the road; nor is the grant defeated by mere relation back of a homesteader's subsequent patent to the time of his entry; but he is entitled to compensation for improvements: *Ibid.*

120. All grants to a railroad of the right of way over premises must be construed reasonably, and in the light of surrounding circumstances. (For construction in a particular case, see CONVEYANCES, § 248): *Newaygo Manuf. Co. v. Chicago & W. M. R. Co.*, 64 M. 114.

121. An agreement for a railroad right of way cannot rest partly in writing and partly in parol, and if so made the written contract supersedes the oral: *Waldron v. Toledo, A. A. & G. T. R. Co.*, 55 M. 420.

122. A deed of a right of way to a railroad company, on condition that the company lay a side-track in some convenient place to be chosen by the grantor, on his premises, within a specified time, or in default forfeit the grant, is construed to mean that the period within which the track must be laid shall not begin to run until the grantor has designated the place for it: *Ibid.*

123. A deed to a railroad company "of 100 feet in width, being fifty feet on each side of the line which may be hereafter established by said company for the route of their railroad over and across" a specified forty-acre tract, conveys a mere floating right that can only become operative as a conveyance of title by the actual location of the route across such tract: *Detroit, H. & I. R. Co. v. Forbes*, 30 M. 165.

124. A condition in a conveyance to a railroad company that the company "shall build, erect and maintain a depot or station-house on the land herein described, suitable for the convenience of the public, and that at least one train each way shall stop at such depot or station each day when trains run on said road, and that freight and passengers shall be regularly taken at such depot," is not specifically enforceable as such against the grantee; the courts cannot undertake the management of railroading details, and the requirement as to the depot's suitability is too indefinite: *Blanchard v. Detroit, L. & L. M. R. Co.*, 31 M. 43.

125. Where a railway company seeking to condemn lands does not obtain authority from the owner in fee, it can obtain no rights of control over the land by any license or grant from the holder of a contingent dower interest or a tenant at will: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456.

126. The charter of a railroad company empowered it to settle with any owner his claim of damages for the occupation of land; therefore a grant to the company, by one of several tenants in common, of the right of way as to his interest over the common estate, although it passes no fee and confers no right as to the other tenants, is nevertheless valid, and operates as to the tenant executing it as a release of his damages: *Draper v. Williams*, 2 M. 586.

As to proceedings to avoid deed of right of way, see MANDAMUS, § 98.

(c) *Condemnation proceedings.*

1. General matters.

127. The territorial legislature had power to appropriate private property for public use on securing proper compensation, and could lawfully authorize a railroad corporation to take such property for such use: *Swan v. Williams*, 2 M. 427.

128. Condemnation proceedings are not judicial in the ordinary sense: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456.

129. The inquiry in proceedings to condemn lands for railroads is as to an appraisal or estimate of values and a determination of the necessity of the proposed taking: *Ibid.*

130. Proceedings to condemn land for railroad uses are purely statutory; the remedies therein provided are exclusive, and cannot be extended beyond those contained in the statute: *Derby v. Gage*, 60 M. 1.

131. But for the specific provisions of our constitution the state could have provided that the inquiries as to necessity and value should be made by any medium it might select: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456. See *People v. Michigan Southern R. Co.*, 3 M. 496.

132. If necessary, intangible rights may be condemned provided compensation is made: *Dunlap v. Toledo, A. A. & G. T. R. Co.*, 50 M. 470.

133. Whether a homesteader's inchoate title is such an interest as can be appropriated under the general railroad law by adverse proceedings, *querre*: *Flint & P. M. R. Co. v. Gordon*, 41 M. 420.

134. The corporate existence of a company and its right to exercise corporate franchises cannot properly be passed on by the inferior tribunals for assessing damages in condemning lands, and cannot therefore be considered on *certiorari* to review their action: *Schroeder v. Grand H. & M. R. Co.*, 44 M. 387.

135. The title of a land-holder cannot be litigated in proceedings before commissioners to condemn the land for railway purposes; and his averment, in answer to the petition for the condemnation of a particular lot, that this and certain other specified lots, lying together, constituted his homestead, and that he occupied them as such, was held sufficient to raise the question of injury to the contiguous lots: *Port Huron & S. W. R. Co. v. Voorheis*, 50 M. 506.

136. An order under H. S. § 8340, allowing possession to be taken of lands sought to be condemned pending proceedings therefor, when, after failure of a first attempt to condemn them, by reason of defects in the proceedings, a second attempt is made, cannot, if it can be granted at all, be granted without full notice and an adequate hearing; and the probate court has never power to make such an order: *Detroit, L. & N. R. Co. v. Livingston Probate Judge*, 63 M. 676.

137. Where a railroad corporation had, in good faith, obtained an assessment of damages for land needed for their road long before they wanted the use of it, and afterwards, when any delay would have been injurious to them, and while the confirmation of the inquisition was pending in the supreme court, to which it had been reserved, had tendered the damages assessed and proceeded to use the land, an injunction to restrain the use was refused, notwithstanding the inquisition was not valid until confirmed; inasmuch as the corporation could only be delayed, and could not be prevented from finally obtaining the land: *Mercer v. Williams*, W. 85.

As to compensation allowed where right of way is taken for street or highway crossing, see HIGHWAYS, §§ 62-64.

2. The petition; map and survey.

138. A petition to acquire title to land for railroad purposes must allege that the taking is necessary for the public use: *Grand Rapids, N. & L. S. R. Co. v. Van Driele*, 24 M. 409.

139. A petition which alleges that the property sought is "required" for public use is sufficient. "Required" is synonymous with "necessary": *Flint & P. M. R. Co. v. Detroit & B. C. R. Co.*, 64 M. 350.

140. Petition for condemnation of land for use of railroad set forth and held sufficient in form and substance: *East Saginaw & St. C. R. Co. v. Benham*, 28 M. 459.

141. Where it is sought to appropriate the land of several persons for a right of way for a railroad, the petition therefor must distinctly

describe each parcel and the purposes for which it is wanted, and must give the reasons for the necessity of proceeding to take it under the statute: *Chicago & M. L. S. R. Co. v. Sanford*, 28 M. 418.

142. A petition for a right of way for a railroad is too defective to maintain proceedings if it does not distinguish the lands of the several owners, nor show the cause of proceeding against each; and when a verdict under it is set aside, the case cannot be referred back to a new jury, but the parties must proceed by a new application: *Ibid*.

143. The petition need not show an intention to build the entire road if a division of fifteen miles has been lawfully designated; but in such case it must appear in the petition affirmatively that such division has been lawfully made in such manner as to conform to the statute: *Ibid*.

144. A petition by a railroad company to acquire title, for railroad purposes, to lands used and occupied as a street, is fatally defective if it does not disclose whether it is designed to appropriate the lands as the respondent's property, or whether they were included in the petition for the purpose of having an assessment of the respondent's damages, by reason of his ownership of premises fronting on the street; if the latter, the petition must show that he owns such premises: *Mansfield, C. & L. M. R. Co. v. Clark*, 28 M. 519.

145. A petition for condemnation is jurisdictionally defective if it only describes the land as a strip 100 feet wide, commencing on the east line of the W. $\frac{1}{4}$ of the S. W. $\frac{1}{4}$ of section 22, running N. 59° 10' W. across certain designated governmental subdivisions, and lying 50 feet on each side of the center line of a specified railroad as located by a certain survey and indicated by stakes. And a report by the jury which describes the land in this way, and gives no map and does not name, as far as possible, the owners of land to be condemned, will not sustain an award: *Toledo, A. A. & N. M. R. Co. v. Munson*, 57 M. 43.

146. The fact of petitioner's inability to acquire title amicably by agreement with the owner is jurisdictional and must be alleged, and may be controverted: *Chicago & M. L. S. R. Co. v. Sanford*, 28 M. 418; *Grand Rapids, L. & D. R. Co. v. Weiden*, 69 M. 573 (April 20, '88).

147. Where the statements of the petition that the corporation has sought in good faith to acquire the title, and that the land-owner demanded an exorbitant price, are denied by the answer, and where evidence is given of the sum offered and of the price asked, it is

error to exclude testimony of the value of the property and of other lots in the vicinity, offered to support the answer; and this error is reviewable on *certiorari*: *Grand Rapids, L. & D. R. Co. v. Weiden*, 69 M. 572.

148. The petition need not state the particulars of the unsuccessful negotiations to acquire title—what offers were made or declined—but it is enough to state that the owner asked what petitioner considered an unreasonable price, and that he refused to accept a reasonable sum offered: *Ibid*.

149. Where the evidence showed that before the petition was filed no sufficient effort was made to settle with the owner, but that such effort was made before the proceeding was moved in the probate court, this court reluctantly allowed the petition to stand without being resworn or presented anew: *G. R. & I. R. Co. v. Weiden*, 70 M. 390.

And as to petition, see *infra*, §§ 232-235.

150. The map and survey required by C. L. 1871, § 2312, must embody or be accompanied by such full and accurate notes and data as will furnish complete means for identifying the precise position of every part of the line, with courses and distances throughout, so that there can be no doubt as to where any portion of it is to be found: *Convers v. Grand Rapids & I. R. Co.*, 18 M. 459.

3. Parties.

151. The power of a railroad company to begin proceedings for the condemnation of lands within the state is not lost by its consolidation with another railroad company into a new organization so as to constitute a corporation subject to the laws of the same state as the original company: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456.

152. All the owners of any parcel sought to be condemned must be before the court; the necessity of taking undivided interests in the same land cannot be determined separately: *Grand Rapids, N. & L. S. R. Co. v. Alley*, 84 M. 16, 18.

153. And a dismissal of the petition as to joint owners not served operates as a dismissal as to all: *Ibid*.

154. In proceedings to condemn lands for a railroad right of way, mortgagees of the land must be defendants; and a discontinuance as to them without adjudicating on their rights is fatal to the proceedings: *Michigan Air Line R. Co. v. Barnes*, 40 M. 383.

4. Notice.

155. The charter of a railroad corporation is not unconstitutional because not expressly

requiring notice to the owners of proceedings to assess the compensation for property taken, the charter evidently contemplating notice; so that it is the duty of the tribunal in which the proceeding is taken to see that it is given: *Swan v. Williams*, 2 M. 427.

156. The jurisdiction of the probate court in proceedings to condemn lands for railroad purposes is dependent upon proof of a valid notice to the land-owners; and notice mailed to a party whose residence was in fact, and was so alleged in the petition, at Aurora, New York, directed to him at Batavia, Cayuga county, New York, is void: *Morgan v. Chicago & N. E. R. Co.*, 86 M. 428.

157. Jurisdiction to appoint commissioners of appraisal in proceedings to condemn land cannot be conferred by notice served only on a person who is in no way connected with the owner of the premises, and has only gone on them to receive service by collusion with those interested in the condemnation: *Dunlap v. Toledo, A. A. & G. T. R. Co.*, 46 M. 190.

158. The want of publication of notice to owners and parties interested cannot be insisted upon on appeal when all concerned have voluntarily appeared in the case: *East Saginaw & St. C. R. Co. v. Benham*, 28 M. 459.

5. Jury and its functions.

159. The right to a jury trial in railroad condemnation cases is a substantial one that cannot be refused or evaded when asserted in proper time: *Port Huron & N. W. R. Co. v. Callanan*, 61 M. 12.

160. The drawing of a jury must be in the presence of the court at the time of making the order therefor: *Convers v. Grand Rapids & I. R. Co.*, 18 M. 459.

161. The "vicinage" from which jurors are to be drawn is the whole county, and not the town or neighborhood in which the land is to be taken: *Ibid*.

162. The jurors must be freeholders: *Peninsular R. Co. v. Howard*, 20 M. 18.

163. And the order of the court should direct freeholders to be summoned: *Mansfield, C. & L. M. R. Co. v. Clark*, 23 M. 519.

164. In drawing jurors from the petit-jury box those not freeholders must be set aside, and the drawing is to continue until the requisite number of qualified jurors is obtained: *Peninsular R. Co. v. Howard*, 20 M. 18.

165. Where the claimant to lands, the title to which a railroad company had petitioned to acquire, was present at the impanelling of a jury of inquest, and no challenge was interposed, the objection to the confirmation of the

jury's report, that the jurors were not affirmatively shown to be freeholders, is not well taken in the absence of any showing that any of them were disqualified: *Manafield, C. & L. M. R. Co. v. Clark*, 23 M. 519.

166. A stockholder in the railroad company is not a competent juror, and if one is drawn he should disclose his interest, and the company at its peril should challenge him. An inquest by a jury, one of whose members was a stockholder in the company, is void: *Peninsular R. Co. v. Howard*, 20 M. 18.

167. One who has given his note to a railroad company to aid in the construction of its road is disqualified as a juror in proceedings to condemn land for its right of way; and the disqualification cannot be removed by stipulation between the parties: *Michigan Air Line R. Co. v. Barnes*, 40 M. 383.

168. A subscriber to a railroad-aid fund, who takes no stock in the road, acquires no legal interest in another projected road from the fact merely that it is to be leased to the road which he has aided; and he is not therefore incompetent to act as a juror in condemnation proceedings by such other road: *Detroit, W. T. & J. R. Co. v. Crane*, 50 M. 182.

169. Jurors may be challenged for cause in these proceedings, but not peremptorily: *Convers v. G. R. & I. R. Co.*, 18 M. 459; *Peninsular R. Co. v. Howard*, 20 M. 18.

170. A challenge is properly overruled if the judge knows at the time of nothing which would give the juror a bias; and if the challenger knows of facts which would do so, it is not enough to present them for the first time as a reason for refusing to confirm proceedings which have been long in progress at considerable cost, and in which the juror has taken part without any showing of legal cause against his acting: *Detroit, W. T. & J. R. Co. v. Crane*, 50 M. 182.

171. On an inquest of the value of property required for a railroad, after a juror had been struck from the panel by one of the parties, and the jury completed, it was held that he could not be resummoned by the officer in the place of one who had been excused: *In re Detroit & P. R. Co.*, 2 D. 367.

172. In these proceedings the oath of the jurors is not to be construed by itself, but as part of the proceedings in which it is taken; and if, when so construed, everything required by the statute is embraced in substance if not in form, it is sufficient: *East Saginaw & St. C. R. Co. v. Benham*, 28 M. 459.

173. The jury, in proceedings to condemn lands, are not bound by the testimony submitted to them, but are also expected to use

their own judgment and knowledge from a view of the premises and from their own experience as freeholders: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456.

174. Where the jury in proceedings to condemn land for a railroad take all measures that they would if they were personally concerned to acquire a knowledge of the value of the land and of the injury the road is likely to cause it, it is presumable that further evidence as to the public importance of the work and as to amounts of compensation to other owners will no more influence their judgment than such evidence would if they were merely buying and selling: *Detroit, W. T. & J. R. Co. v. Crane*, 50 M. 182.

175. An inquest of damages for land condemned for railway uses may be conducted by a jury without legal assistance, and liberal practice in the admission or rejection of testimony is allowable; and the conclusions of the jury thereon will not be disturbed except for rulings that were manifestly inaccurate and did substantial injustice: *Michigan Air Line R. Co. v. Barnes*, 44 M. 222.

176. The jury or commissioners in proceedings to condemn land for railway uses are judges of the law as well as of the facts: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456; *Port Huron & S. W. R. Co. v. Voorheis*, 50 M. 506.

6. Functions of court.

And see *supra*, §§ 175, 176; *infra*, §§ 195-201.

177. The functions of the judge in attendance upon a jury in condemnation proceedings are at most advisory; and where the proceedings of the jury are not based on false principles, the supreme court, on review, will not consider questions raised on merely technical objections to the admission or rejection of testimony though in accordance with the judge's rulings: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456.

178. If, in proceedings to condemn land, a jury has been summoned under proper circumstances, has conducted its inquiries legally and with due regard to private rights, and has reached a legitimate conclusion as to the necessity for the condemnation and the compensation, the appropriation of the land on payment of such compensation will be lawful and will not be affected by collateral action by the judge or court: *Ibid*.

179. The award of the jury in proceedings to condemn lands for railroad uses will not be set aside merely because of the admission of

testimony that would not have been admissible under strict legal rules, unless it appears to have caused substantial injustice: *Detroit, W. T. & J. R. Co. v. Crane*, 50 M. 182.

180. Proceedings to condemn land for railway uses are special and unlike ordinary trials at law; the inquest may be conducted by commissioners or a jury without the aid of counsel, so that the practice must be simple and a large discretion allowed in admitting or rejecting testimony: *Port Huron & S. W. R. Co. v. Voorheis*, 50 M. 506.

181. It is not error for the court to refuse to instruct the jury or commissioners on the condemnation of land for railway uses: *Flint & P. M. R. Co. v. Detroit & B. C. R. Co.*, 64 M. 350.

182. The probate court cannot direct a continuance in condemnation proceedings before commissioners appointed by it: *M. C. R. Co. v. Tuscola Probate Judge*, 48 M. 688.

7. Verdict or report.

183. The verdict in proceedings to condemn land for railroad purposes must be unanimous, and a verdict signed by less than all the jurors is a nullity: *Chicago & M. L. S. R. Co. v. Sanford*, 23 M. 418.

184. Under a petition to acquire title for railroad purposes, but failing to show for what purpose the lands specified are included in the petition, an award of a jury disclosing that they had assessed the damages which they thought the respondent entitled to on account of his "claiming" to own certain lands used and occupied as a street, without determining whether, in fact, he did own it, and from which it does not appear whether the damages awarded were the estimated value of the land, or only that of some doubtful claim they supposed him to be setting up, cannot be sustained: *Mansfield, C. & L. M. R. Co. v. Clark*, 23 M. 519.

185. A finding in the verdict that "it is necessary that said real estate and property should be taken for the purposes of said company" is not such a finding of the necessity for the taking of said property for the public use, either in form or substance, as is required by Const., art. 18, § 2. The report of the jury or commissioners must distinctly find that the taking is necessary for the public use and benefit; and to make such a report they must be satisfied, not only that the particular land is needed for the construction of the work, but also that the work itself is one of public importance: *Ibid.*

186. A finding by a jury that they "did

ascertain and determine that it is necessary for said company to take said real estate for public use, to wit, for the purpose of said company's incorporation as and for right of way," is a sufficient finding that the land was required for the public use: *East Saginaw & St. C. R. Co. v. Benhum*, 28 M. 459.

187. The verdict of a jury "that it was and is necessary to take and use said land for the purpose of operating and constructing said railroad by said company" is not sufficient either in form or substance: *Grand Rapids, N. & L. S. R. Co. v. Van Driele*, 24 M. 409.

188. Where commissioners were appointed to determine the necessity of taking land for a railroad company, their finding "that the taking of said strip or parcel of land was required and necessary for the constructing and operating of said railroad and a necessary public use thereof" was held sufficient: *Morgan's Appeal*, 39 M. 675.

189. A description in an award condemning lands for railway purposes allowed a strip 80 feet wide on each side of a given line across the entire premises, except that in crossing a specified parcel a strip only 25 feet wide was allowed south of the line. It also described another parcel by making the boundary begin and end at the east end of the northerly outside line of the former, and by giving the courses and distances. Held sufficient: *Michigan Air Line R. Co. v. Barnes*, 44 M. 222.

190. Where a jury is required merely to determine the damages or compensation for taking property for a railroad company, a finding in general terms is sufficient, and it need not specify the amount allowed for each item of injury. And, unless there are indications to the contrary, the presumption is that all evident facts bearing on the amount of damages were taken into account: *Ibid.*; *Flint & P. M. R. Co. v. Detroit & B. C. R. Co.*, 64 M. 350.

191. In taking lands for a right of way for a railroad, each owner has a right to have a finding as to the value of his land and the necessity for taking it; and a general finding, giving a single sum for taking the land of several owners, is invalid: *Chicago & M. L. S. R. Co. v. Sanford*, 23 M. 418.

192. Where the interest of two persons in lands is treated as joint by the petition asking that they be condemned for railroad purposes, and the persons appear jointly and jointly demand a jury, it is not improper for the jury to award an undivided sum to the two; their own action precludes them from insisting that their interests should have been separately re-

garded: *East Saginaw & St. C. R. Co. v. Benham*, 28 M. 459.

193. An award of damages is not invalid for having been reached by averaging the amounts as marked by each commissioner, if the commissioners did not agree beforehand upon this mode of compromise, but merely resorted to it as a proper method of arriving at a just result, after stating to each other the amounts which they had individually fixed: *Marquette, H. & O. R. Co. v. Houghton Probate Judge*, 53 M. 217.

194. An award of damages for land condemned for railway uses was sustained where it expressed the gross sum allowed to all joint claimants and specified how much of it was for each of those interested as mortgagees: *Michigan Air Line R. Co. v. Barnes*, 44 M. 222.

195. The confirmation of a report in condemnation proceedings is not a matter of strict right even upon a regular record. If substantial reasons are shown against it by facts not in the record itself, the court has power to do justice and refuse confirmation, and on appeal the same power exists: *Port Huron & N. W. R. Co. v. Callinan*, 61 M. 12.

196. The probate court in condemnation cases has power to set aside the report of commissioners for good cause shown; if, for example, the amount awarded is unreasonable, and indicates prejudice or impartiality or action upon a wrong basis of estimation: *Marquette, H. & O. R. Co. v. Houghton Probate Judge*, 53 M. 217.

197. The finding of a jury in these cases is not conclusive as to the amount of damages; and such finding will be set aside where it appears that the award is in disregard of contradicted testimony and of proper elements of damage: *Grand Rapids & I. R. Co. v. Weiden*, 70 M. 390.

198. The showing upon a motion to set aside an award is ordinarily made by affidavits and counter-affidavits, but it is discretionary with the court to require oral testimony and cross-examination: *Marquette, H. & O. R. Co. v. Houghton Probate Judge*, 53 M. 217.

199. The official report of the commissioners appointed by the probate court in proceedings to condemn land for railroad purposes should not ordinarily be outweighed by affidavits as to the value of the land and the damage thereto. Such evidence is, however, admissible on a motion to set aside the report: *Ibid.*

200. Commissioners in proceedings to condemn land for railway purposes are not like a common-law jury, and their individual affida-

vits are admissible to impeach their finding or to show, like any other fact, the rule of damages on which they proceeded: *Ibid.*

201. Where the land has been actually appropriated by the railroad company after paying the award therefor under protest, the company cannot claim that the award should be set aside, as that would deprive the owners of their property without the necessity or the compensation being first determined, which the constitution forbids: *Ibid.*

8. Damages; costs.

202. An award of damages in condemnation proceedings is invalid if, without the consent of the parties, it gives compensation on any but a money basis: *Toledo, A. A. & N. R. Co. v. Munson*, 57 M. 42.

203. When proceedings are had to condemn land for railway use, the damages awarded should include all the consequences of the appropriation of the land in the manner in which the company will use it. The company cannot be required to resort to a new condemnation whenever some new expenditure is to be made or change effected, unless it is something so plainly repugnant to or varying from the purpose originally contemplated as to amount to a change of user: *Barnes v. Michigan Air Line R. Co.*, 65 M. 251.

204. Adequate compensation for land actually taken under proceedings for its condemnation includes its value or the amount to which the value of the property from which it is taken is depreciated. Where the injury affects the rental value or enjoyment, the same principle applies: *Grand Rapids & I. R. Co. v. Heisel*, 47 M. 393.

205. Where land used as a business stand is taken, the owner of the business is entitled, apart from the money value of the property itself, to compensation for the interruption of such business and its damage by the change: *Grand Rapids & I. R. Co. v. Weiden*, 70 M. 390 (May 18, '88).

206. The value of land for farm use is a proper subject of inquiry in proceedings to condemn it for railway purposes: *Michigan Air Line R. Co. v. Barnes*, 44 M. 222.

207. Where commissioners appointed to assess damages for taking land for railroad purposes assessed them in view of the tract taken altogether, but understated the quantity of the land by a fraction of an acre, it was held that it did not invalidate their action: *Morgan's Appeal*, 39 M. 675.

208. Where proceedings are taken to condemn a portion of a city lot for a railroad right

of way, and the lot is part of a homestead lying on both sides of an alley, the award of damages cannot be confined to the land actually taken, but must cover such actual injury as is done to the entire homestead, including the easement in the alley: *Port Huron & S. W. R. Co. v. Voorheis*, 50 M. 506.

209. In assessing damages for the taking of land for railroad purposes, work already done by the railroad company upon the land in the reasonable belief that the land would be obtained by amicable means cannot be regarded as part of the realty for the purpose of increasing the damages: *Morgan's Appeal*, 39 M. 675.

210. A railway track or other improvement wrongfully placed upon land by a railroad company, and not abandoned to the owner of the premises, cannot be treated as a part of the realty for the purpose of increasing its value in estimating the damages due to the owner in subsequent proceedings to condemn the land for the use of the company: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456.

As to recovery of damages for illegal appropriation or occupancy, see *infra*, §§ 243-254.

As to damages where one railroad crosses another, see *infra*, §§ 236-240.

211. Execution will not issue against a railroad company to enforce payment of either damages or costs allowed in condemnation proceedings; unless such payment is made in sixty days the title of the owner to the land is not divested: *Derby v. Gage*, 60 M. 1.

212. The owner of lands sought by a railroad company is not put in fault so as to be liable for the subsequent costs by refusing a tender; nor is he deprived of any rights by the mere deposit, pending appeal, of the sum awarded by the jury: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456.

213. Where condemnation proceedings were affirmed on appeal so far as they related to the findings of the jury, but were reversed as to certain collateral orders, costs of the supreme court and of the proceedings below were awarded to appellant: *Ibid.*

9. Appeals.

As to CERTIORARI to review condemnation proceedings, see that title, §§ 87, 52, 53, 59, 65.

214. Any one — e. g., a mortgagee — whose rights are affected by the result of condemnation proceedings may appeal, even though there has been a discontinuance as to him: *Michigan Air Line R. Co. v. Barnes*, 40 M. 333.

215. Under H. S. § 3337, requiring that a notice of appeal from an appraisal or report in proceedings to condemn lands for railroad uses "shall specify the objections to the proceedings," an objection that the court did not have jurisdiction to appoint the commissioners or to confirm their report is too general: *Flint & P. M. R. Co. v. Detroit & B. C. R. Co.*, 64 M. 350.

216. The notice of appeal must point out the errors and defects complained of with such particularity that the attention of the appellee and the court will be at once precisely directed to them: *Ibid.*

217. Whether, on these appeals, questions can be brought up by bill of exceptions, *quere*: *Michigan Air Line R. Co. v. Barnes*, 44 M. 323.

218. Objections to the petition and award must be clearly specified: *Ibid.*

219. An objection that the award of a jury in proceedings to take land "is against the law and evidence in the case" cannot show what objections are deemed waived, and is insufficient to raise any question: *Ibid.*

220. An appeal from confirmation of an award or report brings before the supreme court the entire case as it stood before the confirmation: *Peninsular R. Co. v. Howard*, 20 M. 18; *Port Huron & S. W. R. Co. v. Voorheis*, 50 M. 506; *Toledo, A. A. & N. M. R. Co. v. Munson*, 57 M. 42.

221. And jurisdictional defects will defeat the proceedings at any stage, whether relied on or not: *Toledo, A. A. & N. M. R. Co. v. Munson*, 57 M. 42.

222. The objection that a stockholder in the railroad sat as a juror may be raised in the supreme court for the first time: *Peninsular R. Co. v. Howard*, 20 M. 18.

223. When a party seeks a ruling on which to base an appeal if it is wrong, he cannot rely on the judge's private knowledge of facts, but must bring them into the case in some authoritative and responsible form, so that they may become a part of the record for the purposes of the review: *Detroit, W. T. & J. R. Co. v. Crane*, 50 M. 189.

224. In reviewing proceedings for the condemnation of lands, the supreme court cannot consider any reasons against the confirmation of the report of the jury except those which were presented to the lower court: *Ibid.*

225. Rulings on the admission of testimony in proceedings by commissioners or a jury for the condemnation of lands for railroads will not be reviewed on appeal to the supreme court unless they have done substantial injustice: *Port Huron & S. W. R. Co. v. Voorheis*, 50 M. 506.

226. The findings of a jury in proceedings for the condemnation of land will not be set aside unless upon objections raised in the record and unless the record shows that the proceedings were erroneous: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456.

227. The finding in proceedings to condemn land that the taking thereof is necessary is conclusive if there is evidence to support it: *Port Huron & S. W. R. Co. v. Voorheis*, 50 M. 506.

228. The award of damages in proceedings to condemn land is conclusive on review unless the authorities making it have misconceived the law and have not fully considered all the essential elements of the injury done to the landholder: *Ibid.*

229. An award of damages and compensation for property taken for railway purposes will not be disturbed on review unless grossly inadequate, or so inadequate as to give rise to the inference that the jury or commissioners acted on a wrong basis: *Flint & P. M. R. Co. v. D. & B. C. R. Co.*, 64 M. 350.

(d) *Condemnation of way across another railroad.*

230. One railroad company has no right to appropriate, without compensation, the franchises or property of another for the construction of its road; the fact that property has been taken for a particular public use does not make it public property for all purposes; and the property rights of a railroad company in its right of way are protected by the same restrictions against appropriation by any other railroad company for railroad purposes or other public use as is afforded by the constitution and laws in the case of the private property of an individual: *Grand Rapids, N. & L. S. R. Co. v. Grand Rapids & I. R. Co.*, 35 M. 265.

231. The same legal proceedings must be had where one railroad company seeks to acquire the property of another to effect a crossing as in the condemnation of private property for public purposes in other cases: *Toledo, A. A. & N. M. R. Co. v. Detroit, L. & N. R. Co.*, 63 M. 564.

232. The petition for condemnation to effect a railroad crossing must show a *bona fide* attempt and failure to obtain, by treaty between the parties, the property and franchises described therein. This is jurisdictional: *Ibid.*

233. Such a petition is fatally defective if it seeks for condemnation of the title to the land in the right of way sought to be obtained and nothing else. It must describe the rights

and franchises it may condemn under the statute, or that petitioner wishes to condemn: *Ibid.*

234. The petition of one railroad for the right to cross or connect with another need not contain statements not required by the statute for obtaining title to real estate or other property; *e. g.*, it need not state the manner of the crossing, whether above or below the grade: *Flint & P. M. R. Co. v. Detroit & B. C. R. Co.*, 64 M. 350.

235. H. S. § 3340, allowing an order to be made permitting possession to be taken of lands sought to be condemned, pending a second attempt to condemn them after a first attempt has failed by reason of defective proceedings, does not apply where one railroad seeks to cross another: *Detroit, L. & N. R. Co. v. Livingston Probate Judge*, 63 M. 676.

236. A railroad company whose road is crossed by another's cannot be compelled to pay any part of the expense of making a crossing; and H. S. § 3350, as amended by S. L. 1888, p. 187, § 36, is unconstitutional in so far as it contemplates this: *Toledo, A. A. & N. M. R. Co. v. Detroit, L. & N. R. Co.*, 63 M. 564.

237. The compensation to one railroad for a crossing effected by another properly includes the value of the land and any additional expense created in the ordinary use of respondent's road, or any other injury or damage to its track, right of way or franchise occasioned by the crossing, and which may properly be considered as the natural, necessary and proximate cause thereof: *Ibid.*

238. The compensation to be paid to one railroad where a crossing is effected by another includes the value of the land taken, the damage suffered from the interruption of its business, and the damages accruing from the expense made necessary by such crossing: *Toledo, A. A. & N. M. R. Co. v. Detroit, L. & N. R. Co.*, 63 M. 645.

239. The damages to be paid by one railroad company for the right to cross another's track should include the cost of maintaining signals, a crossing system, and a watchman, if necessary; but the value of the land, and the cost of stopping trains at the crossing, are not proper items of damage: *Flint & P. M. R. Co. v. D. & B. C. R. Co.*, 64 M. 350.

240. In dismissing a bill to enjoin interference with a crossing which complainant had made by violent and illegal methods over defendant's road, the court, in order to end the controversy, and as a condition of granting the affirmative relief asked by defendant, made a decree — conditioned on defendant's

assenting thereto — appointing the members of the state board commissioners to adjust the crossing, and to estimate the compensation to be paid therefor: *Toledo, A. A. & N. M. R. Co. v. Detroit, L. & N. R. Co.*, 63 M. 645.

241. It is a condition precedent to any assumption of power to make a crossing, even after condemnation, that the state board shall determine the manner and conditions of making the crossing: *Detroit, L. & N. R. Co. v. Livingston Probate Judge*, 63 M. 676.

242. The statute does not authorize the road making the crossing, even where the condemnation is regular, to use its own discretion in making it, or to disturb the old road or change its grade. It contemplates harmonious action by both roads, or action under the supervision of the state board: *Toledo, A. A. & N. M. R. Co. v. D., L. & N. R. Co.*, 63 M. 645.

(e) *Actions for wrongful appropriation.*

243. Where a subscriber in aid of a railroad is injured by the road's being run across his lands instead of half a mile away, as contemplated by his promise, he has a remedy for such damages as he has suffered thereby, independent of his agreement: *Michigan, M. & C. R. Co. v. Bacon*, 83 M. 466.

244. The statute for the condemnation of lands to the use of a railroad company does not empower a party aggrieved by its unauthorized occupancy of land to resort to the statutory remedy of appraisal for compensation, but he has a right of action in the ordinary way. Until the proper body has passed upon the necessity for the railway the question of compensation by statutory appraisal cannot arise: *Grand Rapids & I. R. Co. v. Heisel*, 47 M. 393.

245. Where the owner of land has allowed a railroad company to build and operate a road over it with the understanding that the rights of parties as to damages should be adjusted thereafter, and the company takes statutory proceedings to fix the damages, the owner should present all his claims for settlement in these proceedings, and cannot split his demand and reserve part of it for future litigation. But if such proceedings are not resorted to, he would have a suitable remedy for the enforcement of his rights otherwise: *Harlow v. Marquette, H. & O. R. Co.*, 41 M. 386.

246. An action to recover damages for an illegal occupancy is not abated by subsequent proceedings to condemn the land for railway purposes: *Callanan v. Port Huron & N. W. R. Co.*, 61 M. 15.

247. In probate court proceedings for con-

demnation the land-owner may have damages assessed for a previous illegal occupancy by the company; but he is not bound to do so, and he may bring suit therefor: *Ibid.*

248. Where land has been injured by a railroad company that has gone upon it under void condemnation proceedings, the owner's right to recover damages is unaffected by his having sold it to a third person, for the depreciation would have been taken into account in fixing the price: *Dunlap v. Toledo, A. A. & G. T. R. Co.*, 50 M. 470.

249. But where the land was actually occupied by a tenant, the landlord's right of action for trespass upon the premises under void condemnation proceedings goes with the land and attaches only to his reversionary interest, and is condemned and appropriated therewith, and disappears when subsequent valid proceedings are taken as permitted by H. S. § 3840 and compensation made: *Ibid.*

250. The dedication of a street to the public does not authorize it to be used for an ordinary railroad track; and the municipal representatives cannot authorize it to be so used without compensation to adjacent owners: *Grand Rapids & I. R. Co. v. Heisel*, 88 M. 62, 47 M. 393.

251. And such an owner is entitled to such damages as he would have been allowed to recover on proper proceedings for condemnation: *Ibid.*

252. Where a public street is taken by a railroad company for its track, an abutting owner whose ownership does not extend beyond the street line is not entitled to be compensated as owner for the taking of the land, but is confined to such damages as would affect her as adjacent occupant and proprietor: *Ibid.*

253. Where a railroad track has been laid in a public street without authority to use the street for that purpose, any adjacent proprietor who has not consented to such use is entitled to damages for such injury as he may have suffered in consequence thereof: *Ibid.*

254. It is for a jury to determine the damages to an adjacent proprietor from the malicious and unnecessary operation of a railroad in the public street: *Grand Rapids & I. R. Co. v. Heisel*, 47 M. 393.

IV. CONSTRUCTION, OPERATION AND MANAGEMENT.

Judicial notice of railroad management, see EVIDENCE, §§ 1023-1026, 1035.

255. Failure to pay monthly, as agreed, on a contract for grading a proposed railroad,

would not, of itself, and in the absence of any showing that any delay was authorized by the company, entitle the contractors to recover extra compensation for the labor performed on account of the delay occasioned by such default in payment, and the consequent increased cost of the work: *Grand Rapids & B. C. R. Co. v. Van Deusen*, 29 M. 431.

256. A railway contractor, after agreeing that the material furnished by him for construction should become the property of the company as soon as estimated by its engineer, sublet the job of fencing subject to the conditions of his contract with the company. The contractor was paid eighty-five per cent. on monthly estimates. The subcontractor furnished timber, but did not do his work within the time limited, and the company took possession of it. The contractor had, before this, surrendered his contract. The subcontractor sued the company in *assumpsit* and recovered. *Held*, by an equally divided court, that the judgment should be affirmed: *Sherwood v. Saginaw, T. & H. R. Co.*, 58 M. 317.

257. The president of a railroad company held bonds of the company which were issued to be used in the construction of the road. A contract for construction having been made by the president and others, who were a committee for the purpose, the president took an assignment of an interest in the contract, and claimed to retain the bonds in respect to such interest. In a suit by the company to recover the bonds, the contract being still unperformed and the assignment having been made without the company's assent, *held*, that no contract relation was established by this assignment between the company and the assignee which would entitle him to retain the bonds: *Flint & P. M. R. Co. v. Dewey*, 14 M. 477.

That officers cannot take interest in contracts which they are empowered to let, see CORPORATIONS, § 102.

258. In an action upon a voluntary subscription in aid of a railroad which promises to pay \$100 "in six months after the first cars run over the road" between specified points, the defence cannot be raised that the company has forfeited its franchise by not finishing and putting its road in full operation within the time required by C. L. 1871, § 2442: *Toledo & A. A. R. Co. v. Johnson*, 49 M. 148.

259. Whether the company has finished and put its road into full operation is a question involving matters of fact for the jury: *Ibid*.

260. A chartered railroad company is bound to build its road between the termini named

in its charter, and then to operate the whole of it: *Attorney-General v. Erie & K. R. Co.*, 55 M. 15.

261. Where the lessee of a chartered railroad company discontinued running trains over part of its route and ceased to maintain a station at a certain village, leave to file an information in the nature of *quo warranto* was denied under the circumstances of the case: *Ibid*.

262. Where a railroad constructed by a corporation incorporated under the general railroad law is leased to a chartered company, the lessee in operating the road is bound not by its charter but by the general law: *McMillan v. Michigan Southern & N. I. R. Co.*, 16 M. 79.

263. A chartered railroad company is responsible for the performance of the duties imposed by its charter, even though it has leased its road: *Attorney-General v. E. & Kalamazoo R. Co.*, 55 M. 15.

264. A company that has a right of passage over another company's track is liable if, by its negligence, a collision occurs whereby a passenger in a train of the other company is injured: *Patterson v. Wabash, St. L. & P. R. Co.*, 54 M. 91.

265. Individuals, like corporations, can manage street railways, ferries, turnpikes or bridges, the franchises of which may nevertheless be perpetuated: *McKee v. Grand Rapids & R. L. St. R. Co.*, 41 M. 275.

266. The statutory requirement that every railroad shall impartially and diligently receive and forward the cars of other roads does not apply to cars unfit for passage, but means that no needless delays or hinderances shall be interposed, and that all precautions against the use of improper cars shall be adopted with reference to reasonable dispatch: *Smith v. Potter*, 46 M. 258.

267. A railway company owes a duty to the public to keep its track in safe and suitable condition, and run its trains with regularity and dispatch for the carriage and transportation of passengers and freight: *Henry v. Lake Shore & M. S. R. Co.*, 49 M. 495.

268. A railroad company, when backing its cars on a private track laid by its owners by permission of the city across a public street, at the owner's request and for his convenience, is not engaged in the performance of its own business under its charter, but is employed in a special and temporary service, differing in no legal sense from what might have been rendered by men or horses pushing or drawing cars for the same person on his

own premises: *McWilliams v. Detroit Central Mills*, 31 M. 274.

And see AGENCY, § 8.

269. A firm of loggers agreed to build a tram railway, and contracted with the corporation controlling it to carry their lumber at certain rates. The corporation afterward assigned, and its assets went into the hands of one of the parties with whom the agreement to build was made, and through him became the property of a railway company in which he was a principal stockholder. This company refused to fulfil the agreement for transportation, and the loggers sued out a preliminary injunction restraining it from running over so much of the road as they had built except on condition of carrying their lumber at the rates agreed on. *Held*, that the agreement was no more than an ordinary executory contract, was not enforceable in equity, and gave complainants no more control than other contractors over the road-bed; that the preliminary injunction was a final order and void, and that *mandamus* would lie to set it aside: *Tawas & B. C. R. Co. v. Iosco Circuit Judge*, 44 M. 479.

As to recovery of the penalty provided by H. S. § 3324 for a railroad company's failure to transport a passenger, see CARRIERS, § 108.

270. Where two railroad companies are sued on a joint contract for transportation, evidence as to which was in default is immaterial: *Sisson v. Cleveland & T. R. Co.*, 14 M. 489.

As to custody and disposition of assets by managing director, see CORPORATIONS, § 92.

As to the rights, duties and liabilities of railroad companies in common with other carriers in the carriage, etc., of goods and passengers, see CARRIERS.

Damages for expelling passenger, see DAMAGES, §§ 43, 259; PLEADINGS, § 546.

As to liability for loss of baggage, see CARRIERS, §§ 155, 156.

As to the liability of railroad companies for goods in warehouse, see CARRIERS, §§ 49-57.

271. A railway station-keeper was held criminally liable for assaulting a passenger who did not leave the waiting-room when ordered to do so on account of his spitting on the floor: *People v. McKay*, 46 M. 439.

V. CROSSINGS, CATTLE-GUARDS AND FENCES; LIABILITY FOR INJURIES TO STOCK.

(a) Crossings.

272. The right of the public in a highway crossing a railroad is simply a right of pas-

sage across the railroad. The right of way and of use, when not used or required for the purpose of passage across the railroad, belongs to the railroad company, and may be used by it in the same manner as if no street-crossing was there: *Kelley v. M. C. R. Co.*, 65 M. 186.

273. A railroad company whose road crosses or interferes with an existing highway must bear the expense of putting the crossings and the highway in safe condition; and this includes the cost of such fencing and cattle-guards as may be needed: *Chicago & G. T. R. Co. v. Hough*, 61 M. 507.

274. But H. S. § 1822, in providing that, where any highway may have been or shall be established across a railway, the railroad company shall open, construct and maintain the highway, and the necessary crossing therefor, across its right of way and tracks, cannot be so construed as to compel the company to open and maintain at its own expense that part of a highway which would cross its right of way if the highway itself is not made necessary by the existence of the railroad: *People v. Lake Shore & M. S. R. Co.*, 52 M. 277.

275. And act 166 of 1883, which amends said § 1822 by providing as damages the value of the land used for the crossing, is inoperative so far as it seeks to impose upon the company the expense and duty of opening, completing and maintaining the highway and its approaches, guards and fences: *Chicago & G. T. R. Co. v. Hough*, 61 M. 507.

276. A railroad company crossing a public highway is liable for an injury occasioned to a traveller by a want of repair in the approaches to the crossing, and it makes no difference that the traveller knew of such want of repair; he had a right, notwithstanding, to use the highway: *Maltby v. Chicago & W. M. R. Co.*, 52 M. 108.

277. An individual can sue a railroad company for the personal damage caused by leaving its cars standing across a highway longer than is allowed by H. S. § 8823: *Patterson v. Detroit, L. & N. R. Co.*, 56 M. 172.

278. Whether an encroachment upon the planked portion of a highway crossing by the drawbar of a car standing beside it was or was not a negligent obstruction of passage was a question for the jury: *Lowless v. Detroit, G. H. & M. R. Co.*, 65 M. 292.

279. If an injury results from the neglect of a railroad company to observe the statutory rule that it shall not leave cars standing across a highway more than five minutes at a time, the company is guilty of negligence and liable for the injury if the person who suffered was

not in fault: *Young v. Detroit, G. H. & M. R. Co.*, 56 M. 430.

280. It cannot be said, as matter of law, that a highway crossing is not obstructed by cars when a space of only sixteen feet is left open; it is a question of fact for a jury, depending on the circumstances: *Ibid.*

281. A box freight car left standing at a highway crossing is not of itself an object that would naturally frighten horses of ordinary gentleness; and an action resting on an assumption that it would do so cannot be maintained: *Gilbert v. Flint & P. M. R. Co.*, 51 M. 488.

282. Where a car that had been left for three or four days in a highway crossing very near the travelled part of the way frightened a horse attached to a passing wagon, so that the driver was hurt, the company was held liable: *Peterson v. Chicago & W. M. R. Co.*, 64 M. 621.

283. Staking cars across a public highway is not unlawful, nor is it negligence *per se*: *Kelley v. M. C. R. Co.*, 65 M. 186.

284. The illegal obstruction of a highway by a freight train standing across it is not the proximate cause of the injury which a driver, who, in waiting to get across the track, may suffer from having his horse frightened by a passing train while he is detained there: *Selleck v. Lake Shore & M. S. R. Co.*, 58 M. 195.

285. The failure to erect a caution board at railroad crossings, as required by the statute, does not necessarily make the railroad company responsible for damages occasioned by a collision with one of its trains at the crossing: *Haas v. Grand Rapids & I. R. Co.*, 47 M. 401.

286. Such caution board is for the purpose of a notification to those who are passing along the road; and where a party is familiar with the crossing, and has frequently been over it, and had it in mind on the occasion in question as he approached it, he cannot be said to have been injured by the failure to set up the caution: *Ibid.*

287. Although the crossings at which watchmen or flag-men are required to be kept are determined by the commissioner of railroads, yet when a railroad company so obstructs its track that its trains cannot be seen by those approaching, and so that bell and whistle are not sufficient to warn the traveller, some additional warning must be given, and a flag-man may be necessary to acquit the company of negligence: *Guggenheim v. L. S. & M. S. R. Co.*, 66 M. 150.

288. It seems that the absence of a flag-

man at a street-crossing of a railroad is not necessarily evidence of negligence on the company's part, unless the necessity for stationing and maintaining such flag-man there has been required by the railroad commissioner: *Battishill v. Humphreys*, 64 M. 494.

289. A railroad company is not, as matter of law, under obligation to station a flag-man at a road-crossing in the country, because of the approach to it being partially concealed by embankments or otherwise: *Haas v. Grand Rapids & I. R. Co.*, 47 M. 401.

290. In an action for fatal injury to a person crossing a railway track the jury may properly consider whether the railroad company should not, apart from any statutory requirement, have set up special safeguards at the point where the injury took place, if at that point there were several tracks running side by side, and little opportunity to see a coming train and much noise and confusion: *Staal v. Grand Rapids & I. R. Co.*, 57 M. 289.

(b) Cattle-guards.

291. Cattle-guards are sufficient if they are in good repair and of a pattern that has been found by experience effective in keeping from the track such animals as they are generally designed to restrain: *Smead v. Lake Shore & M. S. R'y Co.*, 58 M. 200.

292. In an action of damages against a railroad company for injuries to horses caused by neglect to keep up proper cattle-guards, testimony was admitted, without objection, having some tendency to prove a cattle-guard insufficient; held no error to submit the question of sufficiency to the jury: *Grand Rapids & I. R. Co. v. Judson*, 84 M. 506.

293. A railroad company is not required, by H. S. § 8377, to cover a ditch which crosses the highway parallel with its track, the entire distance of four rods, but only so much thereof as is used for highway purposes proper: *Whitisky v. Chicago & G. T. R. Co.*, 62 M. 245.

294. The existence of an exceptional case, doing away with the necessity of having a cattle-guard near a highway crossing in a village, cannot be presumed, but must be proved by the defendant company: *Flint & P. M. R. Co. v. Lull*, 28 M. 510.

295. Defendant was held liable for the killing of plaintiff's cow, which got upon its track at a point within an unfenced part of its road, such part extending without any cattle-guards a long distance each side of a station and highway crossing, although the way could have been fenced up to, and guards put in at, such crossing without inconvenience to the public

or the company: *Lafferty v. Chicago & W. M. R. Co.*, 71 M. 35.

296. In an action against a railroad sued for sheep killed on the track, plaintiff cannot recover upon proof that defendant negligently failed to maintain its cattle-guards to a cattle-pass leading to its right of way, without proof that such sheep passed through the gate which was the approach to said pass, left open through defendant's negligence: *Lemon v. Chicago & G. T. R. Co.*, 59 M. 618.

297. In an action for the loss of a colt killed upon a railway track in consequence of the insufficiency of the cattle-guards, it was improper to ask the plaintiff and his witnesses whether, in their opinion, the cattle-guard was sufficient to prevent animals from getting on the right of way under circumstances ordinarily arising at those places: *Smead v. Lake Shore & M. S. R. Co.*, 58 M. 200.

298. A declaration for an injury caused by an insufficient cattle-guard is demurrable if it fails to state the particulars of the insufficiency: *Ibid.*

(c) Fences.

299. At common law railroad companies were not required to fence their rights of way, and were not liable for the accidental destruction of cattle trespassing upon their roads: *Williams v. M. C. R. Co.*, 2 M. 259; *Gardner v. Smith*, 7 M. 410; *Continental Improvement Co. v. Phelps*, 47 M. 299.

300. The act of March 17, 1847 (C. L. 1857, § 628), was not applicable to a railroad company's right of way: *Williams v. M. C. R. Co.*, 2 M. 259.

301. The statutory regulations (H. S. § 3877) concerning the fencing of railways apply north of Saginaw river, except that the statutory penalty for neglecting to build them is not in force: *Marcott v. Marquette, H. & O. R. Co.*, 47 M. 1.

302. Under the general railroad act the liability of corporations organized under it, and their agents, for damages which may result from the neglect of the corporation to erect and maintain fences on the sides of the line of road, attaches as soon as they have possession of the route for the purpose of constructing the road: *Gardner v. Smith*, 7 M. 410; *Continental Improvement Co. v. Ives*, 80 M. 448.

303. A contractor for the construction of the road is an agent of the corporation within the meaning of C. L. 1857, § 1987, requiring railroads to fence their tracks. And he is primarily liable to the same extent that the corporation would have been for the same acts or omissions: *Gardner v. Smith*, 7 M. 410.

304. Where, therefore, while a contractor was engaged in constructing a railroad through certain premises, and had taken away fences for the purpose, the sheep of the owner of the land escaped and were lost in consequence, it was held that the contractor was liable for the loss, notwithstanding the owner turned the sheep into the field after the route was taken possession of, and while the contractor was constantly throwing down the fences for his purposes: *Ibid.*

305. The term "agent," as used in C. L. 1857, § 1987, included every one exercising the powers of the company upon or over the road, and so included another company becoming lessee of the road. Such lessee being thus liable to fence, its neglect to do so rendered not only itself, but the lessor, liable for any damage resulting; and the object of the amendment of 1867 (p. 221) was to give the injured party a remedy against both the agent and the principal: *Bay City & E. S. R. Co. v. Austin*, 21 M. 390.

306. A railway company's liability for an injury done to crops by cattle that have gone upon the premises in consequence of the company's neglect to fence its right of way is not changed by the fact that the road was at the time in the hands of a contractor who had nothing to do with the fencing: *Pound v. Port Huron & S. W. R. Co.*, 54 M. 13.

307. Negligence cannot be alleged against a railroad company for not keeping up its fences, where plaintiff himself, at the time of the resulting injury, was using the gap as a passage-way for his own convenience in hauling railroad ties. And it is immaterial that the gap was there before: *Clark v. Chicago & W. M. R. Co.*, 62 M. 358.

308. In an action against a railroad company for the killing of a cow, which got upon the track through defendant's neglect to repair its fence, the fact that the cow had wandered to a highway crossing at the time she was struck is immaterial: *Jebb v. Chicago & G. T. R. Co.*, 67 M. 160.

309. Where a company had acquired a right of way across a farm and had taken down the fences already on the premises, it was liable for injuries done to the crops by cattle which had come upon the right of way and had escaped therefrom upon the farm: *Pound v. Port Huron & S. W. R. Co.*, 54 M. 13.

310. In an action under the statute to recover the value of stock killed by reason of the neglect of a railroad company to fence its track, the negligence of the owner to take care of his property is no defence to the com-

pany, as it would be at common law, since the statute is a police regulation, as much for the security of passengers as the protection of property: *Flint & P. M. R. Co. v. Lull*, 28 M. 510; *Grand Rapids & I. R. Co. v. Cameron*, 45 M. 451.

311. Under the general railroad law of 1871, which went into effect April 18, 1871, and prior to its amendment by act 198 of 1878, the liability of a railroad company for neglect of its duty in fencing its road was subject to an action only by an adjacent occupant or proprietor; and the owner of property distant half a mile from the railroad is not such: *Continental Improvement Co. v. Phelps*, 47 M. 299.

312. The statute does not prescribe as to the strength of the fence, but it must be of such reasonable strength as to confine and turn the animals usually restrained by fences in the country: *Bay City & E. S. R. Co. v. Austin*, 21 M. 890.

313. Act 198 of 1878 (H. S. § 3877), in requiring companies to fence their tracks, only requires reasonable partition fences four and a half feet high, and fairly adapted, so far as their strength and mode of construction is concerned, to keep animals from getting on the track. But act 175 of 1881 (H. S. § 3808) leaves them to be approved and regulated by the commissioner of railroads: *Davidson v. M. C. R. Co.*, 49 M. 428.

314. It being the duty of a railroad company to erect and maintain a fence, if it be insufficient or out of repair, in the absence of any proof showing an extraordinary cause for such condition, the company will be liable for the consequences resulting to the property of any person having an interest in the maintenance of the fence, and not shown to be in fault for such defective condition: *Bay City & E. S. R. Co. v. Austin*, 21 M. 890.

315. The sufficiency of the fence which a railroad company is required to maintain along its track is not impaired by leaving gates in it; nor does it come in question where cattle have got upon the track by going through the gate while open: *Detroit, G. H. & M. R. Co. v. Hayt*, 55 M. 347.

316. Where a railroad track crosses a highway diagonally, and the company, in fencing its right of way, leaves a space between the termination of its fence and the fence of the adjacent owner, its way is defectively fenced: *Coleman v. Flint & P. M. R. Co.*, 64 M. 160.

317. A flock of sheep were killed by a railroad train in the neighborhood of a cattle-guard at a highway crossing. There was testimony that the fencing near by was and had

long been insufficient, and that the cross-fence was two feet short of the cattle-guard and the cattle-guard was shallow. Held that, in an action against the railway company for damages, the case was properly left to the jury: *Agnew v. M. C. R. Co.*, 56 M. 56.

318. The statute does not requiring fencing, etc., where it would be illegal or improper that the road should be fenced, as at the crossings of streets or alleys in a city or town, or at mills and depot grounds and the approaches thereto, where public convenience requires the way to be left open: *Flint & P. M. R. Co. v. Lull*, 28 M. 510; *Chicago & G. T. R. Co. v. Campbell*, 47 M. 265; *McGrath v. Detroit, M. & M. R. Co.*, 57 M. 555; *Early v. L. S. & M. S. R. Co.*, 66 M. 849.

319. But the track within the corporate limits of a city or town, at points where no such reasons apply, is as much within the statute as the track elsewhere: *Flint & P. M. R. Co. v. Lull*, 28 M. 510.

320. Any exceptional case preventing the application of the statute must be proved by the company when it is sued for an injury from failure to fence, and such case will not be presumed: *Ibid*.

321. And, therefore, in an action against a railroad company for injuries to stock which got upon its track through an open, unfenced space, away from a highway, it is for defendant to show that such space is within its station grounds: *Wilder v. Chicago & W. M. R. Co.*, 70 M. 382.

322. The extent of unfenced depot grounds is not fixed according to the continuous, actual use of every part of them; nor can their proper limits be collaterally determined by a jury in an action against the company for the loss of a cow that came upon the track near the station where there was no fence: *McGrath v. Detroit, M. & M. R. Co.*, 57 M. 555.

323. Where stock are killed on defendant's track, having entered thereon from unfenced station grounds, the criterion of defendant's liability is not whether all the grounds set apart for station purposes have been actually used, but whether defendant, in view of the present or prospective needs of such grounds for a station, has exercised a reasonable discretion in throwing them open for that purpose; and where it appears from the testimony that the grounds are not unreasonably extensive, the company's liability is a question of law, and is not for the jury to determine: *Rinear v. Grand Rapids & I. R. Co.*, 70 M. 620.

324. A railroad company must be as watchful to keep its fences in repair as any prudent

person would be in maintaining fences to protect his own property: *Crosby v. Detroit, G. H. & M. R. Co.*, 58 M. 458.

325. A railroad company, though required to maintain side-fencing, is not liable for the destruction of cattle suddenly let loose upon the track through a breach in the fencing caused by a storm, and existing through no fault or neglect of the company: *Robinson v. Grand Trunk R. Co.*, 32 M. 823.

326. A railroad company, in maintaining fences along the track, is only bound to reasonable diligence, and is not liable for injuries occurring to cattle which come upon the track through defects in fences not traceable to want of care: *Grand Rapids & I. R. Co. v. Monroe*, 47 M. 152.

327. Where the fences had been accidentally destroyed by fire after the track inspector had made his daily inspection, and the fact was not known until after the injury had been done, the company was not guilty of negligence: *Toledo, C. S. & D. R. Co. v. Eder*, 45 M. 829.

328. A railroad fence was found burning at about six or seven o'clock in the evening; the section foreman got notice thereof at about eight o'clock, and went next morning before six to repair the fence with the nearest materials belonging to the company, which were about half a mile distant. *Held* not unreasonable delay: *Stephenson v. Grand Trunk R. Co.*, 34 M. 823.

329. A railroad fence burned and animals were killed on the track. The fence was mended without unreasonable delay. In an action for the injury done, evidence was offered that it might have been mended sooner by using materials nearer at hand. But it did not appear that they were available, and did appear that they did not belong to the railroad company. *Held* proper to exclude the evidence: *Ibid*.

330. Track-repairers found at the close of the day that several rods of railway fencing, enclosing pasture land, had been burned, but they put off mending it till morning. Meanwhile a horse got upon the track during the night and was killed by a passing train. *Held*, that in an action against the company for the injury it was for the jury to say, in view of all the circumstances, whether defendant was negligent: *Crosby v. Detroit, G. H. & M. R. Co.*, 58 M. 458.

Neglect to fence track as rendering company liable for personal injury, see *infra*, §§ 415-417.

331. In an action against a railroad company for damage arising from neglect to

fence its lands, the declaration need not be specially framed upon or refer to the statute imposing the duty of fencing railroads — that duty being imposed by a general statute, and the action not being one for a penalty but for damages resulting from a neglect of a statutory duty: *Grand Rapids & I. R. Co. v. Southwick*, 30 M. 444.

332. Where action was brought to recover damages arising from the neglect of a railroad company to fence its road, and the injuries complained of extended over a period within which the statute requiring the fencing had been changed as to the extent of the liability imposed for the neglect, but not as to the duty of maintaining fences, a declaration that made no specific reference to the statutes was held good in the absence of demurrer; there would be no practical difficulty in determining the admissibility of proofs by the laws in force at the time to which they refer: *Continental Improvement Co. v. Ives*, 30 M. 448.

333. Where, in an action against a railroad company for damages arising from want of fencing, the declaration charged the defendant as a corporation "owning, occupying and doing business on and over" a certain road naming it), "under the laws of the state of Michigan," it was *held* that the objection could not be raised, under the plea of the general issue, that it did not allege defendant to be a corporation or otherwise competent to be sued: *Grand Rapids & I. R. Co. v. Southwick*, 30 M. 444.

334. General allegations of the continuous operation of a railroad and continuous neglect to fence it, and that damage resulted therefrom, are sufficient to authorize a recovery for such natural mischiefs as invariably follow the destruction of fences and exposure of lands, and which cannot easily be itemized: *Ibid*.

Further as to declarations for neglect to fence, see PLEADINGS, §§ 245, 539, 585.

335. In an action against a railroad company to recover for animals killed on its track through its failure to keep its fences in repair, plaintiff cannot be allowed to show that animals of his other than those killed had on several occasions, months before the loss sued for, been seen on defendant's right of way: *Jebb v. Chicago & G. T. R. Co.*, 67 M. 180 (Oct. 13, '87).

336. As the statute requiring railroad companies to fence their roads reaches all corporations occupying railways built under the general laws, and as there are no other railways except those built under special charters, of which the courts must take notice, the finding of occupancy by a specified company, as a

corporation, brings it plainly within the law: *Continental Improvement Co. v. Ives*, 30 M. 448.

337. In an action against a railroad company for damages arising from its neglect to fence its road, an objection to findings as to damages for injuries committed in certain specified years, on the ground that there were parts of those years in which there was no liability for damages proved, was not sustained where the record did not indicate that any evidence for those years was objected to, or that any attempt was made to obtain a more specific finding. Errors are not to be presumed; the presumption is that the finding does not cover any period during which there was no liability: *Ibid.*

338. In an action against the Continental Improvement Company for damages arising from its neglect to fence the road controlled by it, it was held that a finding that "the Grand Rapids & Indiana Railroad" is located on the land, and that "grading was commenced on such railroad in the month of June, 1868; that the said Grand Rapids & Indiana Railroad Company has never built or caused to be built any fences," etc., could not be misunderstood in view of the universal custom of calling railroads by the name of the company laying out or building them; also, that, where the sense was clear and the bill of exceptions furnished conclusive proof by which the finding could be amended, the defect would not be held a fatal omission upon the objection that it failed to declare specifically that the Grand Rapids & Indiana Railroad Company was a corporation owning and occupying the road in question or coming within the railroad laws: *Ibid.*

339. C. L. 1857, § 1987, as amended in 1867, p. 221, giving double damages for injury arising from neglect to erect and maintain fences, was repealed after verdict, but before judgment. Held, that the damages could not be doubled: *B. C. & E. S. R. Co. v. Austin*, 21 M. 390.

As to the measure of damages for injury to animal through neglect to fence, see DAMAGES, §§ 176, 177.

Statute providing for attorney fee is invalid: See CONSTITUTIONS, § 149.

VI. LIABILITY FOR PERSONAL INJURIES.

As to declarations in actions for railway negligence, see PLEADINGS, §§ 232-235, 237, 238, 240, 242, 243, 247, 536, 537, 539, 546.

Admissibility of opinions and conclusions in actions for negligence, see EVIDENCE,

§§ 562, 566, 572, 573, 577, 578, 581, 599-605, 610, 668, 670.

Statements, etc., of employees in such actions, see EVIDENCE, §§ 156, 397, 400.

Care or want of care at other times of person injured is immaterial: See EVIDENCE, § 142.

Evidence as to extent of injury, see EVIDENCE, § 70.

As to damages for personal injuries, see DAMAGES, §§ 88, 339, 342.

Damages for causing death, see DAMAGES, §§ 346-355.

(a) To employees.

See, generally, NEGLIGENCE, I, (a), 2.

340. The responsibility of a railroad company to its employees for the condition of its road is less strict than it would be to strangers; and an accident to an employee, involving no liability, might, if it happened to another person, cause an actionable injury: *Batterson v. Chicago & G. T. R. Co.*, 53 M. 125.

341. An employee cannot bring an action against a railroad company upon the obligation which it owes the public to keep its track in safe and suitable condition, and to run its trains with regularity and dispatch for the carriage of passengers and freight: *Henry v. Lake Shore & M. S. R. Co.*, 49 M. 495.

342. Where an employee is injured through the negligence of a railroad company, a corporation into which the former is subsequently merged is liable to the same extent as its predecessor was: *Batterson v. Chicago & G. T. R. Co.*, 53 M. 125.

343. A manufacturer of nitro-glycerine contracted with a railroad company for the transportation of a quantity, and the latter requested another railroad company to move the car loaded therewith some distance over its track. The company so requested sent a switchman to perform the service, and he was killed by the explosion of a can while it was being loaded. The loading was done by employees of the manufacturer, and the switchman had no control or authority over them. He, however, knew the dangerous character of the work. Held, that there was no ground of action against the company which employed the switchman for the fatal injury to him: *Foley v. Chicago & N. W. R. Co.*, 48 M. 622.

344. A railroad company is required to use due care to provide materials, machinery and other means by which an employee is to perform his work, safe for his use, and to keep them in repair and order, so as not unneces-

sarily to expose him to danger: *Hewitt v. Flint & P. M. R. Co.*, 67 M. 61.

345. A railroad company is not bound to change its manner of using its side tracks, or to adopt the most approved ways or appliances in business: *Ibid.*

346. A railroad company is under no legal obligation to maintain, for the protection of its employees, a station agent at a flag-station where there is an unblocked siding. All that is required of it is that it construct and equip its side tracks and cars, and station its agents, in the manner usual with well-managed railroads, and as good railroading requires: *Ibid.*

347. Plaintiff, an engineer in the employ of the defendant railroad, was injured in a collision caused by a flat-car (which had stood upon a siding) running down upon the main line. There being nothing to show that the side track was not in proper condition, or that the company had not used ordinary care in placing the car upon the siding, *held*, that the omission to provide the flat-car with brakes, or the side track with stop-blocks, was not actionable negligence: *Ibid.*

348. A railway company whose track is broken without any fault of its own is under no obligation to its employees to repair it within any specified time, if it duly warns them so that they shall not be injured in consequence thereof: *Henry v. Lake Shore & M. S. R. Co.*, 49 M. 495.

349. In an action against a railway company for negligent injury to an employee from a defect in a roadway which has just come under its control from another company, there can be no presumption that defendant had had sufficient time to remedy the defect: *Batterson v. Chicago & G. T. R. Co.*, 49 M. 184.

350. Where the defendant railroad company had made a general order directing all car-inspectors and repair-men, before going between or under any cars, to place a red signal-flag on the end of the car or cars in the direction from which a train or engine could approach, and forbidding all train-men to back against or couple onto any car while such signal was displayed, *held*, that defendant was not negligent in not having a watchman or "bumpers;" nor was it negligence to run other cars upon the same track where cars were being repaired, when space was left between them, and the red flag was respected according to the rule: *Peterson v. Chicago & N. W. R. Co.*, 67 M. 102.

351. A railroad company is not under obligation to its servants under all circumstances to make use of the safest known appliances

and instruments, so as to make it responsible for failure to discard what is not such, and to supply its place with something safer: *Fort Wayne, J. & S. R. Co. v. Gildersleeve*, 33 M. 133.

352. A railroad company owes no duty to its employees to make use of the latest improvements in bridges, or to change the structures upon its road so as to conform to the most recent ideas upon such subjects: *Illick v. Flint & P. M. R. Co.*, 67 M. 632. (Jan. 5, '88).

353. Railroad companies may use their own discretion as to what kind of bridges they will use, and when and under what circumstances they will remove or replace them, while they are safe: *Ibid.*

354. The width between the trusses of a railroad bridge is of no concern to a brakeman whose duty does not require him to occupy a place of danger while passing over it: *Ibid.*

355. The discretion of a railroad company as to the sharpness of the curves it shall use in its freight depots and yards, where the safety of passengers and the public is not involved, cannot be interfered with by the courts in determining the company's obligations to its employees: *Tuttle v. Detroit, G. H. & M. R. Co.*, 123 U. S. 189.

356. A railroad company is not bound to block its frogs, particularly if it does not appear that in doing so it would not entail greater dangers than it would avert: *McGinnis v. Canada Southern Bridge Co.*, 49 M. 466.

357. A railroad company is not negligent in omitting to clear snow and ice from the ground alongside its track, even in the neighborhood of depot platforms; and a brakeman suddenly called to supper, who is injured in consequence of slipping on the ice, has no remedy against the company: *Piquegno v. Chicago & G. T. R. Co.*, 52 M. 40.

358. It is the duty of an engineer to know the duties of a station agent along the line of the railroad so far as they relate to the proper discharge of the engineer's duty: *Hewitt v. Flint & P. M. R. Co.*, 67 M. 61 (Oct. 6, '87).

359. A youth of inferior mental and physical power, employed as common laborer on the construction of defendant's road, and who had no experience as a brakeman, was ordered by the superintendent of the work to perform services as a brakeman, and in going to do so was run over and killed. *Held*, that the company was liable: *Chicago & N. W. R. Co. v. Bayfield*, 37 M. 205.

360. Where a railway employee is injured

while in the performance of work to which he was wrongfully assigned, and which he had never agreed to do, he is entitled to recover damages from the railroad company: *Jones v. Lake Shore & M. S. R. Co.*, 49 M. 573.

361. Where a brakeman, on going into the employment of a railroad company, signs a contract binding him to obey all orders, rules and regulations, but in which the general language applies equally to all classes of employees, the agreement to obey all orders must be construed to apply to all which are issued to him in the line of duty in which he is employed; and it does not empower the company to assign him to other duties wholly disconnected therewith and differing therefrom. And while the clause binding him to use care and caution applies to anything he may undertake to do, it is for the jury to decide whether he has violated it: *Ibid*.

Evidence that employee did not voluntarily enter upon work imposed, see EVIDENCE, § 867.

362. A railroad employee was injured while coupling a car that was lower than the rest; he had fully understood the danger, yet had not protested to his employers against the use of the car, nor received any assurance that its use would be discontinued. *Held*, that the company was not liable: *Fort Wayne, J. & S. R. Co. v. Gildersleeve*, 88 M. 138; *Botsford v. M. C. R. Co.*, 88 M. 256.

363. A switchman had his hand crushed while coupling a freight car furnished with double deadwoods, and received from another road where such a contrivance was generally used. He had not been expressly notified that he would be required to handle such cars, but in the course of commerce, and as a matter of business necessity as well as of statutory obligation, they were being constantly received and forwarded like all other cars adapted to the gauge of the road, and having occasion to run thereon. *Held*, that the switchman could not maintain a suit against the company as for negligent injury in receiving the cars or in omitting to notify him thereof: *M. C. R. Co. v. Smithson*, 45 M. 212.

364. The omission of a railroad company to warn an inexperienced brakeman of the specific danger of coupling cars that are furnished with double deadwoods does not make the company liable for an injury received by him in so doing, if the risk is such as to be manifest to any person, and if, on being employed, he was warned in general terms of the perils of coupling cars of different construction, and was told not to take any chances: *Hathaway v. M. C. R. Co.*, 51 M. 253.

365. The risk arising from the use of worn

rails for side tracks in a railroad yard is one of the ordinary risks of a switchman's employment: *M. C. R. Co. v. Austin*, 40 M. 247.

366. Whether an accident occasioned by a misplaced switch, by which a train is run on a side track and against cars standing there, is not within the risks assumed by an engineer in entering into the employment of the company to run its engines, *querc*: *Lyon v. Detroit, L. & L. M. R. Co.*, 31 M. 429.

367. Railroad employees are presumed to be aware and take the risk of dangers from such conditions and defects in the construction of a side track as would be open to observation; and they are also expected to use reasonable care in examining their surroundings: *Batterson v. C. & G. T. R. Co.*, 58 M. 125.

368. An experienced brakeman was ordered by the conductor to attach a car loaded with lumber which projected forward and compelled him stoop in making the coupling. In doing so he delayed a little, and his fingers were caught in the coupling-link and hurt. *Held*, that he could not maintain an action against the railway company, as he fully understood the difficulty to be guarded against, and the conductor was not shown to have been in fault in any way: *Day v. Toledo, C. S. & D. R. Co.*, 42 M. 528.

369. A youth of ordinary intelligence was killed while coupling freight cars. He was fully aware of the danger of such work, and not entirely inexperienced, and his death was not caused by any negligence or carelessness of those in charge of the train. *Held*, that the railroad company was not answerable for his death: *Viets v. Toledo, A. A. & G. T. R. Co.*, 55 M. 120.

370. A railway employee cannot recover for an injury arising from the improper construction of a side track if he had equal means of knowledge with the defendant of the defect and did not protest against it: *Hewitt v. Flint & P. M. R. Co.*, 67 M. 61.

371. If a railroad employee, knowing, or having ample means of knowing, from long-continued employment, the way and manner in which the side tracks are used, continues in the employment without complaint, and is thereby subjected to risks of accident, he is presumed to assume such risks, and, if injured thereby, cannot recover: *Ibid*.

(b) *Negligence of co-employees.*

And see NEGLIGENCE, II.

372. If a railroad company has used proper diligence in choosing competent servants, it is

not liable in damages for an injury to one of them caused by the carelessness of another: *Gardner v. M. C. R. Co.*, 58 M. 584.

373. So, if the servant whose carelessness caused the injury is not shown to be incompetent: *Peterson v. Chicago & N. W. R. Co.*, 67 M. 102.

374. In a suit brought by a railroad employee against the company for damages caused by the alleged unskilfulness or negligence of another employee of the same company, the defendants are entitled to the benefit of a presumption that they exercised due care in the employment of their servants, and that they had no knowledge of the defects of character or incapacity imputed: *Davis v. Detroit & M. R. Co.*, 20 M. 105.

375. General reputation of unfitness would be admissible as evidence, and might be sufficient to charge the company with knowledge, notwithstanding they may have been actually ignorant of it. The ignorance will be negligence in a case in which any proper inquiry would have obtained the information, and where the duty to inquire was plainly imperative. But the burden of proof to establish the unfitness alleged as the ground of the plaintiff's action and the defendant's knowledge of it is upon the plaintiff: *Ibid.*

376. A railroad employee having knowledge of the unfitness of another employee of the same company, or one whose position or duties are such that he ought to be acquainted with such unfitness when it had become notorious, and who does not give information to the company of the unfitness thus actually or constructively known to him, takes upon himself all the risks of injury from such unfitness while engaged in the ordinary performance of his duties, as much as if he had expressly contracted with reference to possible injuries from that cause: *Ibid.*

377. Where the reasons which are relied upon to charge the officers of the company with knowledge apply with equal force to show the knowledge of the plaintiff, the negligence of the latter in not complaining is as great as that of the company in employing an incompetent person. And where employer and employee have equal knowledge, and the latter continues the service, each party takes the risk, unless the employer undertakes to give special directions: *Ibid.*

378. A direction by a railroad officer to his subordinate to perform an ordinary service, such as his employment contemplated — there being nothing unusual in the mode directed — is not such a special direction as will charge the

company for an injury happening during the performance of such service: *Ibid.*

379. Personal presence of officers and directors all along the line of a railroad being impossible, subordinates with more or less discretionary authority are indispensable; and the company has a right to trust that an agent or officer carefully chosen will use good judgment in making his own appointments and doing his own duties, and is not bound to treat an employee as incompetent unless for some error or misconduct going to his general fitness for the place: *M. C. R. Co. v. Dolan*, 32 M. 510.

380. In an action against a railroad company by an engineer for an injury caused by the negligence of a freight conductor, evidence that he was put on the list of conductors some eight months before the accident, after having been employed as brakeman for a longer period, and that he had once by mistake carried a passenger beyond his stopping-place, and had for that reason spoken disparagingly of himself to his employer, does not by itself show him to be incompetent: *Ibid.*

381. A railroad company cannot be held liable as for the consequences of negligently retaining incompetent servants if, in exercising due care and diligence to see that its employees are competent, careful and sober, it fails to discover that they are not. But the degree of diligence which they must exercise must correspond to the servant's responsibility, and it is for a jury to say what reasonable diligence may be. The presumption is that the company has done its duty, and the burden of proving the contrary is on the party complaining of its negligence: *Hults v. Chicago & G. T. R. Co.*, 55 M. 437.

382. Where the officers of a railroad company have had their attention directed to the intemperate habits of an employee, it is their duty to make careful and frequent investigation as to the fact if they retain him in their service. The weight and importance of evidence that they knew of it is for the jury to pass upon: *M. C. R. Co. v. Gilbert*, 46 M. 176.

383. If a locomotive engineer has for several months habitually used intoxicating liquors to such an extent that those who come in contact with him notice his condition, the failure of his superiors to notice it, and their omission to make such inquiries as would disclose it, is negligence: *Hults v. Chicago & G. T. R. Co.*, 55 M. 437.

384. Notice to the caller whose business it is merely to call the conductors in a certain order when trains are ready, and, if one cannot

go, to call the next, of a special temporary incapacity of a conductor called by him, is not notice to the company: *M. C. R. Co. v. Dolan*, 82 M. 510.

385. Evidence that a railroad employee is hasty, passionate and excitable does not, of itself, necessarily show that he is unfit for the post of yard-master; nor does the mere fact that he has sent an engine upon the track when a coming train was overdue conclusively show that the company was negligent in keeping him in its service, since he might have had information showing that the train would not arrive for some time: *M. C. R. Co. v. Gilbert*, 46 M. 176.

386. A locomotive engineer's opinion that, if he had obeyed the order of the yard-master to place his engine on the main track when a coming train was past due he would have gotten into trouble, was held inadmissible to show that the railroad company was negligent in keeping the yard-master in its employment unless the case had been brought to the knowledge of the company officers: *Ibid.*

Evidence as to employee's competency, see EVIDENCE, §§ 49, 957.

387. A brakeman cannot hold the company which employs him responsible for the failure of fellow-servants to take peculiar precautions: *Day v. Toledo, Canada Southern & D. R. Co.*, 42 M. 524.

388. Where the fireman on a freight train was hurt in consequence of the train being ditched through the engineer's neglect to obey signals, which he saw and was bound by the company's rules to observe, the company was not held liable: *Henry v. Lake Shore & M. S. R. Co.*, 49 M. 495.

389. Whether a brakeman can recover against the railway company for an injury received in consequence of the conductor's managing the locomotive in the engineer's absence, *quere*. Judgment denying such liability affirmed by equal division: *Rodman v. M. C. R. Co.*, 55 M. 57.

390. Where the collision in which plaintiff, a railroad engineer, was injured was caused by a flat-car moving from a side track out upon the main track, it was held that if the motion which was the cause of the flat-car's being hauled out was imparted to it by a freight train which had shortly before backed upon the side track, such fact might establish negligence on the part of the men in charge of the freight train, but that for such negligence there could be no recovery against the railroad company, it being the negligence of fellow-servants: *Hewitt v. Flint & P. M. R. Co.*, 67 M. 61.

391. A boy about 17 years old was employed as brakeman by the engineer of an ore train. The engineer had power to employ and discharge brakemen, and the boy was capable and experienced in the business. The engineer directed the fireman to back the locomotive upon a side track to the train, and told the brakeman to attend a switch. He himself went to attend another switch further on. While this was being done the bell and whistle of a train on the main track near by were both sounding. The first switch was passed, and the engineer was about throwing the second when he heard an outcry and saw the brakeman under the locomotive. The brakeman died in a few minutes from his injuries, and his administrator sued the railroad company for the injury. It was proved that the brakeman knew the train was about moving back, and that there was room enough for him to perform his duties. Held, that he needed no further warning of his danger, and that the accident was due to his own negligence; also, that if the failure to sound the bell and whistle of the locomotive was negligence, it was the fault of the fireman, who was a fellow-servant of the brakeman, and for whose negligence towards a fellow-servant the company would not be liable: *Greenwald v. Marquette, H. & O. R. Co.*, 49 M. 197.

392. A railroad employee whose duty it was to couple cars and make up trains was assisted in that work by a helper, and by an engineer and a fireman upon the switching engine. He sued to recover for injuries received while on duty, through the fireman's alleged incompetency in being unable to communicate properly to the engineer the prescribed signals used in making up trains. Held, that he could not recover without establishing affirmatively the receipt by the fireman of the proper signal, the misinterpretation of the same by the fireman to the engineer, through ignorance of the meaning of the signals, and that the injuries were received by reason of such mistake: *Catlin v. M. C. R. Co.*, 66 M. 358.

393. A brakeman in coupling freight cars had his arm crushed by a loosened deadwood on a car which had come from another road. It was the business of inspectors employed on both roads to see that cars transferred were in proper condition, and there was no claim or showing that they were not competent. Held, that the inspector was a fellow-servant of the brakeman, and that the risk of error on his part was one of the risks of the brakeman's employment, and that the brakeman could not recover against the company for the in-

jury: *Smith v. Flint & P. M. R. Co.*, 46 M. 258.

394. Conductors and brakemen are fellow-servants whose acts are not independent in such a sense as to separate them from each other in the line of dangers: *Ibid.*

395. The foreman of a gang of car-repairers and the engineer of a switch-engine are fellow-servants of one of the repairers, who, if he is injured through their negligence, cannot recover against the employing railroad company: *Peterson v. Chicago & N. W. R. Co.*, 67 M. 102.

Further, as to who are fellow-servants, see NEGLIGENCE, §§ 150-155.

(c) *Contributory negligence of employees.*

See NEGLIGENCE, III, (b).

396. An engineer who in running a railroad train is injured while disregarding the instructions which the company has issued for his guidance, and is therein guilty of gross negligence contributory to the injury, cannot recover damages of the company: *Lyon v. Detroit, L. & L. M. R. Co.*, 31 M. 429.

397. A switchman who had been strictly cautioned against having anything to do with coupling cars tried to uncouple some while the train was moving, and had his foot caught where the planking had been for some time slightly broken, though the defect had not been seen by him as yardman and the railroad company had no notice of it. *Held*, that he could not recover for the injury resulting to him: *Gardner v. M. C. R. Co.*, 58 M. 584.

398. A railroad employee was injured by a defective draw-head which he used for the first time without looking at it, acting on the supposition that it was all right. He had worked about the engine nearly a week without examining the draw-head, which he was liable to use at any moment. *Held*, that his negligence would prevent a recovery for the injury: *Goulin v. Canada South. Bridge Co.*, 64 M. 190.

399. A brakeman, whose business it also was to couple cars, had his arm crushed in trying to couple to another car a caboose the draw-bar of which was some six inches below that of the other car and of cars generally. The caboose had been in that condition for a month, as the brakeman himself knew, and it had been reported for repairs; but the fact that the draw-bars were not on the same level must have been apparent to any one attempting to couple the cars, if he used his eyes.

Held, that he could not recover against the railroad company: *Brewer v. Flint & P. M. R. Co.*, 56 M. 620.

400. Where a side track in a freight yard was constructed with a very sharp curve, so that there was great danger that in coupling cars the draw-bars would slip and pass each other, which danger, however, existed only on the inside of the curve, it was *held* to be contributory negligence for an experienced brakeman, who must have been aware of the danger, to remain on the inside while engaged in coupling: *Tuttle v. Detroit, G. H. & M. R. Co.*, 122 U. S. 189.

401. On a signal for brakes, a brakeman, standing on a flat-car in a freight train, caught hold of a ladder on the side of a box-car, and, swinging his body around to ascend, came in contact with a bridge, was thrown down and killed. *Held*, that he was guilty of contributory negligence: *Illick v. F. & P. M. R. Co.*, 67 M. 682.

402. An employee of a car-building company crawled under some new cars which had been removed from the company's yards as completed, and placed upon a railroad company's track for transportation. The conductor of a train had already looked over the cars to see if any one was under them at work. The cars were then coupled to the train and were started up, and the employee was killed. *Held*, that he was guilty of contributory negligence: *Coops v. Lake Shore & M. S. R. Co.*, 66 M. 448.

403. The foreman of a gang of laborers employed by a railroad company to dig and load gravel called out as the train was about to start, "All aboard!" and one of the men, in attempting to jump on while the train was moving, lost his hold and was injured. He swore that he heard no order to board the cars, and went because the others went; and he knew that there was to be another opportunity of getting on the train. *Held*, that there was no evidence of defendant's negligence: *Novock v. M. C. R. Co.*, 63 M. 121.

404. A call "All aboard!" when cars are about leaving is no more than notice of that fact, and justifies no one in boarding or leaving cars in motion: *Ibid.*

405. H. contracted with the defendant company to draw, saw and pile for it certain wood at one of its stations, and plaintiff was employed by him by the day in piling the wood as sawn. While thus employed he was injured by the cars being thrown from the track and running against the woodshed, and in some way causing his hand to be crushed. The company, on the theory (which there was

some evidence to establish) that the cars were thrown from the track by means of a plank which H. had placed between the rails to aid his work under the contract, asked a charge: 1. That plaintiff and H., while working on the premises, were bound to use the same ordinary care against accidents to themselves as was incumbent on the company, and that if the neglect of plaintiff or of H. in the course of their work under the contract contributed proximately to the accident, plaintiff could not recover, unless the conduct of the company's servants was wanton or wilful. 2. That if H., in the course of his work under the contract, placed the plank on the track, and thereby the cars were thrown off and ran against the woodshed, this was neglect on H.'s part which contributed proximately to the accident, and that plaintiff could not recover unless the conduct of the company's servants was wanton or wilful. There was no evidence that plaintiff knew of the plank, but it was proved to have been seen there by the station agent. Upon the question whether this charge should have been given, the court was equally divided: *M. C. R. Co. v. Leahey*, 10 M. 198.

(d) *Liability for injuries to strangers.*

1. Negligence of company.

See, generally, NEGLIGENCE.

As to liability for injuries to passengers from negligence, see CARRIERS, V, (b).

Company's negligence in carrying passenger past station, not proximate cause of subsequent injury: See NEGLIGENCE, §§ 48, 49; PLEADINGS, § 546.

As to negligence in obstructing or not repairing crossing, or in failing to erect caution boards and keep flag-men at crossings, see *supra*, §§ 276-290.

406. Two railroad tracks controlled by the same company crossed a highway near each other, one on a bridge and the other on a level. A flag-man employed for the latter track had for years been in the habit of warning travelers upon the highway of the approach of trains to cross the bridge on the other. In so doing his signals once misled a person driving, so that the latter advanced at the wrong time, and the horse was frightened by a train passing over the bridge. The driver was thrown out and injured, and sued the company, which defended on the ground that the flag-man was not acting in the line of his employment. *Held*, that it was for the jury to say whether the flag-man, who was a servant of the defendant, did not act by its consent, express or im-

plied, or under its direction, in flagging for the bridge: *Peck v. M. C. R. Co.*, 57 M. 8.

407. Plaintiff, who had been a passenger on defendant's train, left its depot on a dark and rainy night, and fell into an unguarded hole on its grounds that was close to the culvert of a diagonal path whereon he was walking; defendant had constructed another and safer path, but most of the travel went over the way used by plaintiff, and defendant had never objected to its use. *Held*, that plaintiff could recover for injuries received: *Cross v. Lake Shore & M. S. R. Co.*, 69 M. 363 (April 6, '88).

408. A man went by night to the depot to meet his wife, and, having occasion to urinate, no special resort being provided, he stepped off the walk, in the darkness, upon a portion of the depot grounds, and fell into a hole. *Held*, that he was a customer of the railway company and not a trespasser, and that he could maintain an action against the company for the injury he sustained: *McKone v. M. C. R. Co.*, 51 M. 601.

409. As the act of running the cars over the road is a lawful act, railroad companies cannot be held liable for accidental injuries occasioned thereby, unless the running was without proper care, or in an unreasonable manner: *Williams v. M. C. R. Co.*, 2 M. 259.

410. The fact that the plaintiff in an action for a railway injury was hurt without his own fault or negligence does not of itself entitle him to recover, as it must further appear that the defendant is legally chargeable with the injury: *Henry v. Lake Shore & M. S. R. Co.*, 49 M. 495.

411. The negligence of a railway company will not be presumed in an action against it for personal injury, but must be shown; and there can be no recovery unless it appears to be the efficient cause of the injury without any contributory fault in the plaintiff: *Mitchell v. Chicago & G. T. R. Co.*, 51 M. 236.

412. Negligence in injuries inflicted by railroad trains upon individuals is a question that depends upon the circumstances, and can rarely, if ever, be absolutely defined as matter of law; and, in determining whether there has been negligence, all the circumstances must be considered together: *Marcott v. Marquette, H. & O. R. Co.*, 47 M. 1.

413. Railway companies buying rolling-stock from reputable manufacturers are not chargeable with negligence in accepting material on such inspection as is usual and practicable, without discovering concealed defects; they cannot be held to warrant their

cars: *Grand Rapids & I. R. Co. v. Huntley*, 38 M. 537.

414. In an action for railway injury, defects in the track at other times and places than those of the accident cannot be shown in proof of negligence contributing to the injury: *Ibid.*

Evidence of accidents to others in same dangerous place not admissible, see EVIDENCE, § 143.

415. Where there is no statute requiring a railroad company to fence its track for the prevention of personal injuries, a charge that if a fence would have prevented such injury it was negligent not to have had it is all that can be asked in an action therefor against the company: *Marcott v. Marquette, H. & O. R. Co.*, 49 M. 99.

416. A railroad company's neglect to fence its track is for the jury to consider as bearing on its liability for injury done to a child which got upon the track in consequence: *Keyser v. Chicago & G. T. R. Co.*, 56 M. 559.

417. Where a railroad company is required by statute to fence its road with a fence "sufficient to prevent cattle or other animals from getting on such railroad," the requirement, it seems, includes the protection of children: *Keyser v. Chicago & G. T. R. Co.*, 66 M. 890 (June 23, '87).

418. It is for the jury to determine whether it is not negligence in a railway company to omit means to prevent their cars from moving or being driven beyond the rails where these, if extended, would cross a passage-way, left open by the company to give access to the depot: *Grand Rapids & I. R. Co. v. Martin*, 41 M. 687.

419. It is negligence in a railroad company to allow coal-bins so close to its track that persons upon an excursion car cannot safely stand, while passing them, upon the running board that stretches along the side of such a car: *Dickinson v. Port Huron & N. W. R. Co.*, 53 M. 43.

420. Whether the piling of wood by a railroad company by the side of its track, adjacent to a road crossing the track, in such manner as to obscure the view of crossing trains, imposes upon the company the duty of great care or caution in running their trains, or making use of extra means of notifying those about to cross when trains are approaching, *quere*: *Lake Shore & M. S. R. Co. v. Miller*, 25 M. 274.

421. It is gross negligence to back a train, without a brakeman at the rear end as a lookout, across the main thoroughfare of a village, when there is no flag-man at the crossing,

even though the rate of the train is but little faster than a person walks: *Cooper v. Lake Shore & M. S. R. Co.*, 66 M. 261.

422. If a railroad company, by placing freight cars on a side track, obstructs the view of its track at a public crossing, it is bound, irrespective of statute, to take extra care to guard against accidents: *Guggenheim v. Lake Shore & M. S. R. Co.*, 66 M. 150.

423. Where the view of a railroad track as it crosses a public street is obstructed by buildings and freight cars, the company is not relieved from the duty of giving warning, by whistle or otherwise, of the approach of trains by the absence of a statute requiring such warning: *Ibid.*

424. The neglect of a railroad company to ring a bell, as required by statute when approaching a crossing, will make it liable for any injury resulting from such neglect: *Chicago & N. E. R. Co. v. Miller*, 46 M. 532.

425. A man crossing a railway track after dark in a wagon was struck by a passing train and killed. Whether the train was hidden from view by intervening shrubbery, and whether any signal of its approach was given, were disputed questions of fact. *Held* that, so far as these facts involved the legal duty of the railroad company, they must go to the jury: *Klanowski v. Grand Trunk R. Co.*, 57 M. 525.

426. Proof that a railroad company is in the habit of ringing its bell on approaching a station is not competent as bearing on the question of negligence by another company which uses the track of the first at that point as a side track: *Detroit & M. R. Co. v. Van Steinburg*, 17 M. 99.

427. That a train is drawn by a reversed engine is not, it seems, by itself evidence of negligence: *Battishill v. Humphreys*, 64 M. 494.

428. The lookout upon a locomotive must be as efficient as the circumstances require, and especially so when the chances of access to the track are greater than usual: *Marcott v. Marquette, H. & O. R. Co.*, 47 M. 1.

429. A railroad train ran over a child on the track. It appeared that there were visitors in the cab of the engine, and that the presence of strangers without leave was prohibited by rule. *Held*, that it was proper for the jury to consider the fact with other circumstances as bearing on the question of negligence: *Ibid.*

430. Plaintiff, a child three months old, was run over by a railroad train at a crossing in a suburb of Detroit, in the day-time. There was nothing to interrupt the view of the crossing from the train, which could have been stopped before reaching the child had she been

seen, as she ought to have been. The trainmen, however, testified that they were on the lookout and did not see her. *Held*, that there was evidence to sustain an allegation of reckless negligence, and that the question of plaintiff's contributory negligence — could such be imputed to one so young — did not arise: *Battishill v. Humphreys*, 64 M. 514.

431. Boys riding free upon a freight train, by the permission, express or implied, of the employees in charge, cannot be considered trespassers so as to prevent a recovery against the company for their death: *Ecliff v. Wabash, St. L. & P. R. Co.*, 64 M. 196.

432. An eight-year-old boy trespassing upon the premises of a railroad company got on the step of the engine and was ordered off by the fireman, and as he jumped off he fell. The locomotive was started that moment and the tender passed over his leg. He was a boy of more than average intelligence, and had been warned against going on the premises or riding on the engine. *Held*, that the railway company could not be held liable for the injury without showing that the engineer or other servants of the company in charge of the locomotive knew that the child was in the way, or that they had been reckless or negligent in the management of the engine, or could have anticipated the injury: *Chicago & N. W. R. Co. v. Smith*, 46 M. 504.

433. A child two and a half years old is no such trespasser in going upon a railroad track as to forfeit redress for being run over and seriously injured by the recklessness or negligence of the engineer. Nor can the child be considered negligent. The question of its parent's negligence in permitting it to go is for the jury: *Keyser v. Chicago & G. T. R. Co.*, 56 M. 559.

434. A little child got upon a railroad track at a point where it was unfenced, and was injured by a passing train, the engineer of which had seen an object on the track half a mile distant, but had not recognized it as the child. A large verdict for the injury was affirmed, but a majority of the court did not expressly concur upon any point: *Keyser v. Chicago & G. T. R. Co.*, 66 M. 390.

435. Proof that a heavily-loaded train of cars was running down a wharf, at the rate of from ten to fifteen miles an hour, without a locomotive, when people were landing from a steamboat, is sufficient proof of negligence: *Malmsten v. Marquette H. & O. R. Co.*, 49 M. 94.

436. It cannot be presumptively negligent to run a railroad train in the usual manner, in the absence of proof that such usual manner

is in itself improper: *Grand Rapids & I. R. Co. v. Judson*, 34 M. 506.

437. More than ordinary speed is not necessarily evidence of negligence in running a train: *Grand Rapids & I. R. Co. v. Huntley*, 38 M. 537.

438. A high rate of speed at a common highway crossing is not of itself negligence: *Klanowski v. Grand Trunk R. Co.*, 64 M. 279.

439. Though there is no statute limiting the speed of railroad trains when crossing a public street, yet where the crossing is made dangerous because the view of the track is obstructed by buildings and freight cars, the speed should be consistent with the degree of care and prudence required for the safety of the lives and property of the persons rightfully approaching and travelling over such crossing: *Guggenheim v. L. S. & M. S. R. Co.*, 66 M. 150 (June 9, '87).

440. It is a question for the jury whether a special train can be run without negligence at such a speed as to make it difficult to check its speed within a reasonable time and distance: *Marcott v. Marquette, H. & O. R. Co.*, 47 M. 1.

441. Sending out a train with so few brakemen that on some grades its speed cannot be checked cannot be held, as a matter of law, to have no tendency to support an allegation of reckless management; nor can the neglect be held to be of one degree rather than another; if there are special circumstances tending to excuse such management, they are for a jury to weigh: *McDonald v. Chicago & N. W. R. Co.*, 51 M. 628.

442. It is negligence not to slacken the speed of a train so that it can be stopped if necessary, if the engineer has seen an object on the track a long way off, and cannot tell what it is: *Keyser v. Chicago & G. T. R. Co.*, 56 M. 559.

443. A railroad engineer is bound to slow down or stop his train if possible where he finds that persons on the track are apparently unaware of the danger of being run over, and do not hear or give attention to the warning signals: *Bouwmeester v. Grand Rapids & I. R. Co.*, 63 M. 557.

444. An engineer is not required to heed a signal to stop his train, given by a stranger, when no danger is in sight or may be reasonably apprehended: *Blair v. Grand Rapids & I. R. Co.*, 60 M. 124.

445. In an action for damages resulting from a train's striking a team at a railroad crossing, the court, after charging that there could be no recovery if the proper signals were given, left it to them to determine

whether there were any unusual circumstances which made speed unreasonable. There was nothing in the pleadings or proofs to show that there were any exceptional circumstances, or that this crossing was more dangerous than others. *Held*, that the charge was contradictory and erroneous: *Klanowski v. Grand Trunk R. Co.*, 64 M. 279.

446. Where trains are required by law to come to a full stop before crossing a railroad track, it seems that their neglect to do so, though not averred in a declaration for injury to persons crossing their tracks, has nevertheless some bearing on the question of the speed at which they were running near such crossing: *Staal v. Grand Rapids & I. R. Co.*, 57 M. 239.

447. In an action for railway negligence the question how far an easy-running flat-car, given motion towards the south end on a descending grade, would run without obstruction towards the north, was held too indefinite to be material: *Hewitt v. F. & P. M. R. Co.*, 67 M. 61.

Evidence as to speed of trains, see EVIDENCE, §§ 50, 395, 599, 600-604, 670, 677.

Remote evidence as to location and dimensions of platform and station in action for negligence, see EVIDENCE, § 75.

2. Contributory negligence.

See NEGLIGENCE, III, (a).

As to contributory negligence of railway passengers, see CARRIERS, §§ 128, 134, 136-151.

448. The doctrine of comparative negligence does not prevail in Michigan, and cannot be applied to the case of a person injured while crossing a railroad track: *Mynning v. Detroit, L. & N. R. Co.*, 59 M. 257.

449. One cannot recover for an injury caused by the collision of a locomotive with the wagon in which she was riding, if her own negligence contributed directly or proximately to the injury, though the negligence of the railroad company may have concurred: *Lake Shore & M. S. R. Co. v. Miller*, 25 M. 274.

450. In an action against a railroad company for injuries caused by the collision of its locomotive with the wagon in which the plaintiff was riding, the latter's right to recover was affected as much by the negligence of the person owning and driving the team as by her own: *Ibid*.

451. An administrator cannot recover damages for the negligent killing of his intestate, who was run over by a street-car, if the negli-

gence of the deceased contributed to the injury, and if he had not exercised that reasonable care to avoid injury which a person of ordinary prudence would have shown under the circumstances: *Kelly v. Hendrie*, 26 M. 255.

452. It is not contributory negligence to assume that it will be safe to go through an open passage left by a railroad company to give access to their depot, even though the track ends near by and is not protected by snubbing-posts: *Grand Rapids & I. R. Co. v. Martin*, 41 M. 667.

453. It may be assumed that a railway company will take the utmost care to protect persons from injury in crossing a passage left by it to give access to the depot, when the passage does not actually cross the railway track: *Ibid*.

454. In an action to recover for injuries received by falling, on a dark night, into a turn-table pit located upon the defendant's depot grounds six feet from the line of the street along which plaintiff had been walking, the evidence showed that plaintiff was well acquainted with the locality and surroundings, having himself worked for the company many years. *Held*, that he could not recover: *Early v. Lake Shore & M. S. R. Co.*, 66 M. 349 (June 16, '87).

455. A stranger who voluntarily attempted to enter a car in a running train in order to give warning of a broken rail, his previous signal having been disregarded, is guilty of contributory negligence and cannot recover for an injury received in such attempt: *Blair v. G. R. & I. R. Co.*, 60 M. 124.

456. A boy twelve years old, who lived in the immediate vicinity of railroad trains and who was accustomed to them, got upon a freight train without leave, and, while on the front of the engine, was killed by a collision in which no one else was hurt. *Held*, that his contributory negligence would prevent a recovery of damages for his death: *Ecliff v. W., St. L. & P. R. Co.*, 64 M. 196.

457. Where a train which has been standing across a highway has backed down to the cattle-guard for the apparent purpose of letting people pass, it is not *per se* negligence for one who has been waiting to attempt to drive by in front of the engine if his horse is steady; but it is a question for the jury whether it was negligence in the railroad company not to have seen the person so trying to cross, and to have blown off steam while he was crossing: *Geveke v. Grand Rapids & I. R. Co.*, 57 M. 589.

458. One without permission walks upon a

railroad track is guilty of such contributory negligence as will preclude a recovery against the company for his death, unless it appears that the engineer of the train saw and understood the danger, and recklessly ran the train upon him without doing what he could to avoid the injury: *Bouweester v. Grand Rapids & I. R. Co.*, 67 M. 87.

459. One about to pass a railroad track is bound to recognize the danger and use the sense of hearing as well as of sight, to learn before trying to cross whether a train is dangerously near. Neglect to do this is legal negligence, and absence of mind does not excuse it: *Lake Shore & M. S. R. Co. v. Miller*, 25 M. 274.

460. It is error to charge that persons approaching a railroad track in a wagon are required to exercise only such care as "persons of their situation or condition in life" would ordinarily exercise under like circumstances. Such considerations do not affect the question: *Ibid.*

461. A person who, being in full possession of his sight and hearing, crosses, on a dark and stormy night, a railroad track at a street-crossing with which he is well acquainted, without stopping to look or listen, and is killed by a train, is guilty of such contributory negligence as precludes a recovery of damages, though the defendant company is guilty of negligence in moving its train: *Mynning v. Detroit, L. & N. R. Co.*, 64 M. 98.

462. The rule that a railroad track is a warning of danger applies as well to a side track as to the main line: *Mynning v. Detroit, L. & N. R. Co.*, 59 M. 257.

463. When a railroad company is required to sound an alarm, or is in the habit of blowing whistles and ringing bells, a traveller about to cross the track has a right to rely somewhat upon the observance of this custom or duty; and if the track is obstructed temporarily by freight cars, ordinary care does not require that, after he has looked and listened, and heard no warning, and no train is expected at the time, he should stop his team and go on foot upon the track simply because he cannot determine with certainty by sight alone that a train is not approaching: *Guggenheim v. L. S. & M. S. R. Co.*, 66 M. 150 (June 9, '87).

464. To establish negligence on the part of a person who drives upon a railroad track when a train is approaching, it is not enough that he was told the train was coming; it should also appear that he heard and understood what was said to him: *Ibid.*

465. While one who is about to cross a rail-

road track is in any event required to look and listen for an approaching train, he is not required to do so as carefully as he would be were a train due, the time of the coming of which was known to him: *Ibid.*

466. Contributory negligence prevents a recovery for a railway injury, even though defendant was negligent in not exhibiting a light or in failing to ring a bell on approaching a street-crossing: *Mynning v. Detroit, L. & N. R. Co.*, 64 M. 98.

467. Neglect to look and listen before venturing upon a railroad track is such contributory negligence as prevents recovery for defendant's neglect to give signals at a highway crossing: *Matta v. Chicago & W. M. R. Co.*, 69 M. 109.

468. While it is a wholesome precaution for persons approaching the track of a railroad to look both ways and to listen for approaching trains, and while this is what is generally required, it is not a rule of universal application. Each case must depend upon its own circumstances: *Cooper v. Lake Shore & M. S. R. Co.*, 66 M. 261.

469. In an action for injuries caused by a collision with a train while plaintiff was crossing a railroad track, where the track was in plain view for a long distance, so that no one who paid any attention could fail to see the approach of the cars, it was held by a divided court that the case was properly taken from the jury on the ground of contributory negligence: *Straugh v. Detroit, L. & N. R. Co.*, 65 M. 706.

470. The fact that the approach of a railroad to a highway crossing is obscured by embankments or otherwise imposes upon travellers by the highway, as well as upon the railroad company, special care to avoid collisions: *Haas v. Grand Rapids & I. R. Co.*, 47 M. 401.

471. It is negligent to approach a railway crossing with a team so closely as to involve apparent danger, either of direct collision or of the team's being so frightened by the passage of the train as to become unmanageable and likely to get upon the track in spite of the attempt to check it: *Rhoades v. Chicago & G. T. R. Co.*, 58 M. 264.

472. A person approaching a railway crossing rode for nearly fifty rods along a highway, which was for all that distance not far from the track and from which the track was in full view. He was drawn by a double team driven by another man, and another double team was in front. The forward team crossed the track, safely in front of a coming train; but a blast of the whistle started the rear

team and the driver let them go, thinking it the safest way. The team was struck, however, and personal injuries inflicted. *Held*, in an action against the railroad company by the person riding, that he was grossly negligent and the case should be taken from the jury: *Potter v. Flint & P. M. R. Co.*, 62 M. 22.

473. A man approached a railway crossing at an acute angle in a buggy drawn at an easy trot by a horse and a mule. A regular fast train, coming at the same time, and in full sight for a considerable distance if he had turned his head, whistled sharply close by the crossing and frightened his team, so that it became unruly and ran upon the track, and the man was killed. The man, who knew the neighborhood, was apparently ill, and drove absent-mindedly, without noticing the train until he was close to the crossing, though several witnesses saw the danger he was running into. *Held*, that he was guilty of contributory negligence: *Rhoades v. Chicago & G. T. R. Co.*, 58 M. 264.

474. A man was killed while trying to drive across a railway track. *Held*, that in the absence of any knowledge as to what was in his mind, he could not be conclusively found negligent unless no sensible explanation of his conduct was reasonably possible. He had a right to suppose that the railroad company would not violate any legal duty and would not fail to take reasonable measures to prevent mischief. He could not be blamed for doing as seemed best under the circumstances, and it would not necessarily be reckless to go forward rapidly: *Staal v. Grand Rapids & I. R. Co.*, 57 M. 239.

475. A team collided with a railway train at a road-crossing and the driver was killed. The railroad and the highway were both below the general surface of the ground, and an approaching train could only be seen occasionally by one driving towards the crossing. The driver was familiar with the crossing; but except that he checked his team for a moment, some four rods from the crossing, he did not appear to have observed any precaution. The engine whistle was duly sounded when the crossing was approached. *Held*, that the driver of the team was chargeable with negligence directly contributing to the collision: *Haas v. Grand Rapids & I. R. Co.*, 47 M. 401.

476. Plaintiff's intestate was killed while attempting to cross a railroad track in a city street on a dark, rainy night, at a point where the view was unobstructed, and where the head-light of the locomotive which struck him lighted up the track at least a block. *Held*,

that he must have been guilty of contributory negligence, and that there could be no recovery, though the train was run at a speed far beyond that allowed by city ordinances, and though the evidence failed to disclose whether any bell was rung or not: *Kwiatkowski v. G. T. R. Co. of Canada*, 70 M. 549.

477. An old man, who was somewhat deaf, while driving a span of colts towards a railway track down a narrow road from which the track was concealed on one side by a high embankment, stopped to listen, but hearing nothing drove on, and when close by the track a train appeared within a few rods. Fearing that he could not control his horses where they were, he whipped them up, and tried to cross the track, and the rear of the buggy was struck by the locomotive. *Held* that, in an action for the resulting injury, the question whether plaintiff was guilty of contributory negligence was for the jury: *Chicago & N. E. R. Co. v. Miller*, 46 M. 532.

478. The wife of a man who was employed by a railroad company, in taking her husband his dinner, had occasion to cross half a dozen busy tracks that lay side by side. In stepping out from behind some cars that stood on one of the tracks, she was struck and injured by an engine on the next track that was backing down in front of her and across her path. *Held* that, whether or not the railway company was negligent in running the engine at a prohibited rate of speed or in failing to ring its bell, the woman was not exercising ordinary care and could not recover for the injury to which she had contributed by her own negligence: *Pzolla v. M. C. R. Co.*, 54 M. 278.

479. Where a railroad car was negligently left in a highway crossing close to the usual travelled part of the way, the question whether plaintiff used due care in attempting to pass with a wagon and horses, one of which shied at the car just before reaching the track, was held to be one of fact for the jury: *Peterson v. Chicago & W. M. R. Co.*, 64 M. 621.

480. Decedent was seen about to cross a railway track in a village, at a time when a train was approaching from one direction, and one backing towards her from the other direction. She was soon after found dead outside the street limits on railroad grounds, having been run over by the backing train. *Held*, that her being found where she was, outside the street limits, did not of itself make out against her a case of contributory negligence: *Hassenyer v. M. C. R. Co.*, 48 M. 205.

481. Recovery cannot be had for the negligence of a railway company, when the deceased, who was familiar with the locality

and knew that trains passed frequently and that they ran irregularly, stood on the track at nightfall, stupefied and confused with liquor, before the approaching headlight of a slowly-moving locomotive: *Marquette, H. & O. R. Co. v. Handford*, 39 M. 537.

482. A laborer employed by a contractor who had been engaged by a railroad company to lay water-pipes along its right of way, in going home, after his day's work was done, made his way along the tracks to a point where trains were constantly passing in both directions, and although there was enough room between the tracks he was run over by one train while apparently trying to avoid another. He was not employed upon the road, and might have gone home without going along the track; but his employment enabled him to know the locality, the risk and the need of watchfulness to avoid injury. *Held*, that no action would lie for his death: *Bresnahan v. M. C. R. Co.*, 49 M. 410.

483. A workman while on his way home in the evening stood talking with a companion by a railway track where three roads ran side by side, and where, by daylight, the track could be seen for two miles. He had drunk two glasses of beer. He was forty years old and familiar with the locality, and he also knew that a train was due. A well-illuminated passenger train which had broken its headlight, and had substituted an ordinary lantern therefor, approached, and was seen by several persons in the neighborhood. The workman, however, did not see it, but heard a rumbling which he supposed came from some vanishing train on one of the other tracks. He stepped on the track nearest him, with his companion, and both were struck, the latter being killed. *Held*, that he did not exercise due care: *Mahlen v. Lake Shore & M. S. R. Co.*, 49 M. 585.

484. One who, while walking along a railroad's right of way, comes upon a highway crossing, is not travelling along the highway or using it in the ordinary manner; he was a trespasser when he entered upon the right of way, and continued such, and the company owed him no duty unless aware of his presence, and able, by the exercise of care, to avoid injuring him: *Kelley v. M. C. R. Co.*, 65 M. 189.

485. A person walking along a railroad where he had no right to be, and where there were five parallel tracks on which trains passed both ways every few minutes, stepped from one track, to avoid a passing train, upon another track on which an engine was approach-

ing from behind him, and, going on without looking about him, was run over and killed. *Held*, that he was guilty of such contributory negligence as to preclude any recovery: *M. C. R. Co. v. Campau*, 35 M. 468.

486. A man and his wife, riding in a cutter, were approaching a railway track by a road which crossed the track at an acute angle. A freight train on the track lay, apparently, across the road; but, after waiting ten minutes for it to move, the travellers came nearer and found that a space of sixteen feet was left open. The cars, however, on both sides projected somewhat over the travelled part of the road, and, in avoiding them, the man who was driving had to turn his horse so as to cross the track at a right angle, but the horse sheered and the cutter left the planking and was upset and the woman was injured. *Held*, that it could not be said, as a matter of law, that she was guilty of contributory negligence: *Young v. Detroit, G. H. & M. R. Co.*, 56 M. 430.

487. The contributory negligence of a person injured in trying to drive across a railway track is not conclusively shown by the fact that others had just crossed it safely; the fact may tend to prove it, but the question is for the jury: *Ibid*.

488. A man driving a democrat wagon along a city street tried to cross a railway track at a point where his view of the track before crossing was shut off by standing cars and by sheds, and he was killed by a train that was two hours behind time and came at high speed from a direction opposite to that in which he was looking. Several persons testified that they heard no warning signal. *Held*, that the question of liability for his death should go to a jury: *Guggenheim v. Lake Shore & M. S. R. Co.*, 57 M. 488.

489. Whether one who, while driving across a railway track, had watched the engine go by, and was hurt by its backing down on him without warning while he was watching out for further dangers in the rear, was guilty of contributory negligence, *held* a question of fact for the jury: *Palmer v. Detroit, L. & L. M. R. Co.*, 56 M. 1.

490. Where the evidence is conflicting as to the conduct of a child eleven years old in passing over a dangerous railroad crossing, the question whether she used such care as a child of that age should have used under the circumstances is for the jury: *Cooper v. Lake Shore & M. S. R. Co.*, 66 M. 261.

491. An action for a railway injury may be taken from the jury if the undisputed facts

clearly show plaintiff was guilty of contributory negligence: *Mynning v. Detroit, L. & N. R. Co.*, 64 M. 93.

492. An error in taking a case of railway injury from the jury upon a particular question may be rendered nugatory by such evidence of contributory negligence as would render that course necessary: *Rhoades v. Chicago & G. T. R. Co.*, 58 M. 283.

493. In the case of a child suing a railroad company for a negligent injury, it is for the jury to judge of plaintiff's capacity and ability, and the manner in which he used the same at the time of the injury, and also whether he was of sufficient age and judgment to have used them otherwise, so as to have avoided the accident: *Baker v. Flint & P. M. R. Co.*, 68 M. 90.

494. In an action against a railroad company for injuries received in an accident the burden of proof is on plaintiff to show that the company is entirely responsible for the grievance complained of, and that his own negligence did not contribute to the injury; the plaintiff must fully establish whose fault it was, and explain the whole transaction: *M. C. R. Co. v. Coleman*, 28 M. 440.

And further as to burden of proof, see NEGLIGENCE, §§ 99, 220, 222.

495. Where the jury's special findings, in an action for a negligent injury, negative not only the case made by the declaration, but also any agency of defendant's in plaintiff's going upon the place of danger at any time, judgment should be entered for defendant upon such findings: *Thorsen v. Babcock*, 68 M. 523.

VII. LIABILITY FOR FIRES.

496. The care which a railway company must exercise in the running of trains so as not to injure property situated near its track is not contingent upon such circumstances as the force and direction of the wind, the dryness of the weather, or the combustible character of property likely to be affected. The company not being in fault as to the quality or character of their equipments, the special risks incident to proximity to railroad trains must be borne by those who establish themselves in such localities: *M. C. R. Co. v. Anderson*, 20 M. 244.

497. A railroad company must keep its right of way reasonably clear of dangerous combustible matter, and, if a fire occurs in consequence of a negligent failure to do so, it is liable for damage ensuing therefrom to the property of another: *Jones v. M. C. R. Co.*, 59 M. 437.

498. In an action against a railroad company for injury from the negligent spreading of fire, if it is made to appear by plaintiff's testimony that the fire originated from either of the causes mentioned in H. S. § 8378, the burden is cast upon defendant to show itself free from negligence: *Ibid.*

499. A railroad's negligent failure to remove or destroy dangerous combustible matter in its right of way is a question for the jury: *Ibid.*

500. Persons who have authorized the use of a locomotive on their premises, and have known of its use and acquiesced in it, have no right of action for damage done to their property by fire set by sparks from such locomotive: *Spear v. Marquette, H. & O. R. Co.*, 49 M. 246.

501. The owners of a warehouse owned a railroad track running on their own premises near it, and employed a railroad company to send an engine to draw cars over it for their accommodation. The engine threw off sparks badly, and this they observed and complained of, but nevertheless continued to make use of it for a long time. At last the warehouse was set on fire and burned by sparks emitted by it. *Held*, that the owner had no redress against the railroad company for the burning: *Marquette, H. & O. R. Co. v. Spear*, 44 M. 169.

502. And it is immaterial that the railroad company, on repeated applications made that it should repair the engine, had promised to do so "sometime;" the use containing thereafter with plaintiffs' knowledge, and on their application: *Ibid.*

VIII. LIABILITY FOR ACTS AND CONTRACTS OF OFFICERS AND AGENTS.

503. Neither the assistant road-master of a railroad company nor the master of transportation can be presumed to have authority to represent the company in claiming disputed titles: *Drew v. Comstock*, 57 M. 176.

504. Where the treasurer of a railroad company was one of the committee that had executed the contract on its behalf for grading its proposed road, and the only one of them who had given any personal attention to the work or directions to the contractors, and he had stated that the company were unable to collect money fast enough to pay according to the contract, and had asked that the force of men employed be decreased, thereby causing delay in fulfilling the contract, it was *held* that the contractors would have a right to assume, in the absence of any notice to the contrary, that he was authorized

to give such directions, and were justified in acting accordingly: *Grand Rapids & B. C. R. Co. v. Van Deusen*, 29 M. 481.

505. No presumption can arise of any power in a chief engineer, even where a railroad company is acting in the completion of its own road, to make a contract for the erection of depot buildings. The definite location of depots belongs to the board of directors, unless clearly delegated elsewhere; and a chief engineer cannot be made the possessor, by delegation, of the double power of locating depots and contracting for building them, if he can be at all, without the authority of the board: *Bond v. Pontiac, O. & P. A. R. Co.*, 62 M. 648.

506. A railroad company was sued on an alleged oral contract with its chief engineer, whereby plaintiff was to have the building of certain depots. The uncontradicted evidence showed that the whole of the road and its equipments was under contract to be built by an investment company, that the chief engineer had no authority to act in the matter, and that there was no ratification of his action by defendant. *Held*, that the case should be taken from the jury: *Ibid*.

507. A., the purchasing agent of a railroad company, sent an order for timber to B., who, being unable to fill it, called upon C. and told him the company wanted the timber immediately, and "if B. could not furnish it to get some one else to do so." C. delivered the timber to a station agent who had no authority to purchase or contract for it, and he billed it to headquarters in C.'s name as consignor. An order was given to B., a voucher was made out running to him and the money was paid to him, but he failed to pay C. *Held*, that C. could not recover against the company: *Butler v. M. C. R. Co.*, 60 M. 83.

508. A railroad yard-master whose business it is to have charge of the yard and make up trains there, and who has a right to employ and discharge his help in these matters, and employ brakemen for himself and the road trains, and whose authority consists in employing men in his department, has no authority, by virtue of his office alone, to bind the railroad company which employs him to an agreement made by him to pay a surgeon for attending one of the men under him in the service of the company, who has been run over and injured by the company's cars: *Marquette & O. R. Co. v. Taft*, 28 M. 289.

509. Whether the general superintendent of a railroad company can bind the company by his employment of a doctor to attend an

employee injured by their cars, *quere*; the court was equally divided: *Ibid*.

510. A conductor represents the company in the whole management of his train, and in ejecting a passenger he acts in the line of his employment, so that the company is liable for a wrongful expulsion: *Great Western R. Co. v. Miller*, 19 M. 305.

511. But for aggravations arising from his wantonness and malice the company does not stand on the same footing with him: *Ibid*.

512. The fact that a defendant railroad company was engaged in procuring aid and rights of way has no tendency to show that it was building its own road, or that any particular person employed in that work was doing so as a servant of defendant: *Bond v. Pontiac, O. & P. A. R. Co.*, 62 M. 648.

513. The knowledge of the arbitrary mark of a consignee of goods possessed by a former officer or agent of a railroad company is not the company's knowledge so as to affect the company with notice of his ownership of goods thus marked in subsequent transactions: *Great Western R. Co. v. Wheeler*, 20 M. 419.

514. Whatever a company may do or authorize to be done may be ratified and adopted as its act when performed without its authority by its officers or agents: *M'Laughlin v. Detroit & M. R. Co.*, 8 M. 100.

As to company's liability for neglect of its agents, etc., to maintain fences, see *supra*, §§ 302-305.

IX. LIABILITY FOR LABOR DEBTS.

515. The statute for the protection of laborers and persons furnishing material for the construction and repairing of railroads (H. S. §§ 8428-8425), though remedial, must be pursued, as against the railroad company, with some degree of strictness: *Chicago & N. E. R. Co. v. Sturgis*, 44 M. 538.

516. Said statute, being in derogation of the common law, must be strictly construed: *Dudley v. Toledo, A. A. & N. M. R. Co.*, 65 M. 655.

517. The duty imposed by said statute is not that it shall pay the claims of laborers and material-men on the failure or neglect of the contractors to do so, but that it shall retain in its custody the amount due from it to the contractors, not exceeding the amount of the claims furnished, until such contractors or sub-contractors pay such claims: *Ibid*.

518. The statute effects a garnishment or stop-order of the amount due to the contractor. Voluntary payment by the company to the

laborer or material-men is not provided for, but they are permitted to collect pay by action against the company: *Ibid.*

519. A railroad company is not liable for labor to persons hired by a contractor or subcontractor, except so far as it is indebted to the latter: *Bottomley v. Port Huron & N. W. R. Co.*, 44 M. 542.

520. The protection provided for by said statute is confined to laborers for and persons furnishing materials to contractors and subcontractors. One who merely hires out the labor of others is not a laborer: *Chicago & N. E. R. Co. v. Sturgis*, 44 M. 538.

521. Said statute does not apply for the protection of contractors or subcontractors: *Martin v. Michigan & Ohio R. Co.*, 63 M. 458.

522. The labor and material for which said statute makes a railroad company liable must be such as is performed and used in constructing or repairing the road: *Dudley v. Toledo, A. A. & N. M. R. Co.*, 65 M. 655.

523. The labor done by a man's team may be regarded as labor done by him within the meaning of said H. S. §§ 3423-3425: *Chicago & N. E. R. Co. v. Sturgis*, 44 M. 538.

524. But it has since been said that the labor protected by this statute is manual labor, and does not extend to teams used upon the work: *Dudley v. Toledo, A. A. & N. M. R. Co.*, 65 M. 655.

525. Nor does the statute extend to feed furnished for teams employed in working upon the road, or to clothing or board of men so employed: *Ibid.*

526. To establish a cause of action, under H. S. §§ 3423-3425, against a railroad company, plaintiff must show that at the time he furnished the company with a bill of items, or at the pay-day next ensuing, there was an amount due from the company to the contractor, and the amount of such indebtedness, and, also, that the claims sought to be collected are not only undisputed but acknowledged to be due from the contractor or subcontractor: *Ibid.*

527. Testimony that a director and the superintendent of construction for the railroad company told plaintiff, when the latter presented to him a bill of items for labor and material performed for and furnished to a contractor, that "he would try and have them paid, and thought possible some of them would be paid at that pay-day in December," does not tend to prove that the railroad owed its contractor, nor the amount, if any, of such indebtedness: *Ibid.*

528. To enable plaintiff to recover under

said statute it must appear that the itemized bill of material and labor was presented to the company as required by H. S. § 3423: *Martin v. Michigan & O. R. Co.*, 63 M. 458.

529. Papers issued by a subcontractor to his laborers as tokens of their service are not admissible as evidence against the company: *Chicago & N. E. R. Co. v. Sturgis*, 44 M. 538.

530. Claims under H. S. §§ 3423-3425, against railroad companies for labor, etc., are assignable, and may be sued by the assignee: *Chicago & N. E. R. Co. v. Sturgis*, 44 M. 538; *Dudley v. Toledo, A. A. & N. M. R. Co.*, 65 M. 655.

531. But orders drawn by contractors or subcontractors in favor of laborers upon a third party, payable by the latter in money or goods, and accepted and paid by him, do not operate as an assignment to him of the laborers' claims for labor, etc., so as to enable him to sue the company: *Martin v. Michigan & O. R. Co.*, 63 M. 458; *Dudley v. Toledo, A. A. & N. M. R. Co.*, 65 M. 655.

532. In suing a railroad company for a labor debt under H. S. §§ 3423-3425, a declaration on the common counts in *assumpsit*, with mere allusions to the statute and a statement of plaintiff's title by assignment, is not enough; the existence of the facts upon which the statute bases the right of action must be averred: *Chicago & N. E. R. Co. v. Sturgis*, 44 M. 538.

533. Where a railroad contractor has assigned his contract to the superintendent of the company, and the latter has assumed his debts to laborers, the company's liability, if any, for a labor debt does not rest on H. S. §§ 3423-3425, but is at common law on a special contract, and the declaration must so aver the cause of action: *Bottomley v. Port Huron & N. W. R. Co.*, 44 M. 542.

534. A suit against a railroad corporation for a labor debt is brought to fix it with a liability resulting from its ownership of the road, and such a suit does not admit of the theory that defendant is merely an agent of the owner: *Chicago & N. E. R. Co. v. Sturgis*, 44 M. 538.

535. The conditions of C. L. 1871, § 2412, making railway stockholders liable for labor debts to the amount of their stock (which limitation is not found in the present statute, H. S. § 3385), must be strictly complied with: *Peck v. Miller*, 39 M. 594.

536. The services of an assistant chief engineer of a railroad company are not "labor" for which the stockholders are individually liable under Const., art. 15, § 7, and H. S. § 3385: *Brockway v. Innes*, 30 M. 47.

537. Nor is a contractor who has built a section of a road a "laborer" under those provisions: *Peck v. Miller*, 89 M. 594.

X. STREET RAILWAYS.

538. Street railways may be authorized and laid in the public streets of cities and villages without compensating the adjacent lot-owners: *Grand Rapids & I. R. Co. v. Heisel*, 88 M. 62.

539. But a common council cannot so multiply street railway tracks in a particular street as to interfere with the rights of the general public in the street: *Grand Rapids Street Railways*, 48 M. 433.

540. Where a street railway company has refused to build an additional road lawfully required by the common council, it is discretionary with the council to make such changes in the proposed route as to adapt it to form a junction with the road of some company that will build it, even though in so doing a street in which the former company had had exclusive rights is used as a connecting link. If such a use infringes the rights of the former company it is *damnum absque injuria*: *Ibid.*

541. When a regularly incorporated street railway company becomes entitled to the exclusive right to lay its track in certain streets upon the relinquishment or forfeiture of such right by another company, it is thereafter entitled to the same protection against injurious interference to the extent of this right as the other company would have been: *Ibid.*

542. A municipal ordinance gave a street railway company the exclusive right to lay its track in such streets as should be designated by the council, if accepted by the company within a certain time. *Held*, that the company after forfeiting such right as to specified streets could not maintain a bill to enjoin another company, upon which the right had been subsequently conferred, from laying its track in streets not so designated to complainant, unless it could show actual injury thereby to its own interests: *Ibid.*

543. A street railway company, being a "corporation authorized to receive toll" within the meaning of H. S. § 4868, its property and franchises may be levied on and sold under execution; and purchasers may exercise such franchises and collect tolls the same as the corporation: *McKee v. Grand Rapids & R. L. Street R. Co.*, 41 M. 274.

544. A street railway company is bound to exercise such care and diligence in clearing its track of snow as not to interfere needlessly with the safety and convenience of persons

lawfully using the street; and, if an extraordinary snow-fall takes place, it must make extraordinary efforts to dispose of it: *Bowen v. Detroit City R. Co.*, 54 M. 496.

545. Any disposition of the snow cleared from a street railway track must be made with due regard to the rights of travel on the highway; and it cannot be charged as matter of law that the fact that the general level of the road was left above the level of the railway track would not make the disposition of the snow unlawful: *Wallace v. Detroit City R. Co.*, 58 M. 231.

546. In an action for an injury from a street collision the court was requested to charge that, if the street-car track was in such condition that the wheels of vehicles could not pass over it readily and so caused the collision, the plaintiff could not recover. *Held*, that there was no error in adding that, if the offending driver was negligent in trying to cross a track in such condition, and might by ordinary care have avoided the collision, the condition of the track would not excuse him: *Joslin v. Grand Rapids Ice, etc. Co.*, 53 M. 322.

547. One who attempts to cross a street railway track just ahead of the car is guilty of such contributory negligence as prevents recovery, even though there was negligence in running the car at unusual speed: *Kelly v. Hendrie*, 26 M. 255.

548. One who drives upon a street railway track in front of an approaching car without looking around until the car comes into collision with his vehicle is guilty of contributory negligence; and, if he wilfully obstructs the progress of the car when there is nothing to hinder him from getting off the track, he wrongs both the railway company and persons riding in or waiting for the car: *Wood v. Detroit City S. R. Co.*, 52 M. 402.

549. A street railway passenger was injured by the conductor's negligence, and recovered \$5,500 damages, for which the execution issued against the company was returned unsatisfied. *Held*, that he could not sue individual stockholders therefor, as for a corporate debt, under H. S. § 3512: *Bohn v. Brown*, 33 M. 257.

As to liability for injuries to passengers from negligence, see CARRIERS, §§ 133-136, 139-141.

As to construction of obligation to keep street in repair, see CITIES, §§ 84-89; CONTRACTS, § 422.

RAPE.

See CRIMES, III, (a), 2.

REAL PROPERTY.

- I. WHAT CONSTITUTES.
- II. TITLE; SEIZIN; POSSESSION.
- III. ESTATES.

See CONVEYANCES; WILLS; EASEMENTS; LICENSE; LANDLORD AND TENANT; MORTGAGES; NOTICE; RECORDING ACTS; SPECIFIC PERFORMANCE; VENDORS; WASTE.

I. WHAT CONSTITUTES.

See, generally, FIXTURES.

1. As a general rule the principles of the common law treat nothing movable as realty unless either permanently or organically connected with the land: *Higgins v. Kusterer*, 41 M. 318.

2. Standing timber is part of the realty: *Stout v. Keyes*, 2 D. 184; *Wetherbee v. Green*, 23 M. 311; *Greeley v. Stilson*, 27 M. 153; *Johnson v. Moore*, 28 M. 3; *Russell v. Myers*, 33 M. 522; *Haskell v. Ayres*, 35 M. 89; *Wetmore v. Neuberger*, 44 M. 362; *Sovereign v. Ortmann*, 47 M. 181; *Spalding v. Archibald*, 52 M. 365; *Williams v. Flood*, 63 M. 487.

3. Unsevered crops, growing or ripe, pass with the land unless reserved in writing: *Vanderkarr v. Thompson*, 19 M. 82; *Tripp v. Hasceig*, 20 M. 254; *Scriven v. Moote*, 36 M. 64; *Ruggles v. First National Bank*, 43 M. 192; *Coman v. Thompson*, 47 M. 22; *Knapp v. Woolverton*, 47 M. 292.

4. Ice already formed, whether upon or removed from the water, is personalty: *Higgins v. Kusterer*, 41 M. 318.

5. Buildings permanently annexed to the freehold are regarded as realty: *Pangborn v. Continental Ins. Co.*, 62 M. 638.

6. A house erected upon land by one in possession under a contract of purchase is part of the realty: *Hogsett v. Ellis*, 17 M. 351.

7. B., a purchaser of land under a partly performed parol contract, built a house thereon which he occupied for some years and then rented to a tenant, who was ousted by M. under claim of title. Held, that B. could not at the same time treat the building as realty and personalty; that when he rented it he necessarily rented it as a tenement; and that he could not recover against M. in trover as for a conversion: *Bracelin v. McLaren*, 59 M. 327.

8. Permanent improvements made by a life-tenant inure to the benefit of the remainderman: *Curtis v. Fowler*, 66 M. 696.

9. A building erected by the remainder-man with the life-tenant's consent and with the in-

tention to make it part of the freehold becomes such: *Stevens v. Rose*, 69 M. 259.

10. Fences built upon, and a cellar built in, another's land, by one who has fraudulently acquired colorable title, were regarded as permanently annexed in his own wrong, and he was refused indemnity therefor: *McCredie v. Buxton*, 31 M. 383.

That improvements made and railroad ties placed upon land by a railroad company are not part of the realty that must be paid for in subsequent condemnation proceedings, see RAILROADS, §§ 209, 210.

11. The estate of a tenant for years is not realty within the meaning of the statute relating to the levy and sale of lands on execution: *Buhl v. Kenyon*, 11 M. 249.

12. Nor is a contract right of possession of land for a term of years: *Grover v. Fox*, 36 M. 453.

13. Partnership lands are in equity affected with the character of personalty for the purpose of accounting and settlement: *Godfrey v. White*, 43 M. 171. And see cases cited in *Merritt v. Dickey*, 38 M. 41.

As to the purposes for which devised land may be regarded as personalty, see CONVERSION, § 1.

That a contract insuring building is personal and not real, see INSURANCE, § 41.

II. TITLE; SEIZIN; POSSESSION.

As to ownership in common, see TENANTS IN COMMON, I.

As to descent of real property and control of executor or administrator over, see ESTATES OF DECEDENTS.

As to recovery of lands, see EJECTMENT; FORCIBLE ENTRY AND DETAINER.

As to suits to quiet title, see EQUITY, II, (n).

As to evidence of title to land, see EVIDENCE, I, (g); EJECTMENT, VI.

14. Where a title is assailed after standing undisputed for half a century, and being originally founded upon a judicial determination, every reasonable intentment will be made in support of the existing possession: *Willets v. Mandlebaum*, 28 M. 521.

15. Color of title is that which in appearance is title, but which in reality is no title: *Miller v. Clark*, 56 M. 337.

16. What constitutes color of title in a particular case is a question of law for the court: *Ibid.*

17. Tax-deeds and leases, though shown by evidence to be void, afford color of title to one who has gone into possession thereunder: *Hoffman v. Harrington*, 28 M. 90.

Further as to effect of tax-deeds, see TAXES, VI, (k).

A sheriff's deed on a guardian's foreclosure of a mortgage held not to give color of title: See EJECTMENT, § 230.

18. Seizin in fee may include possession, and is of two kinds: seizin in deed and seizin in law. The former is actual possession of a freehold, the latter is a legal right to such possession: *Lull v. Davis*, 1 M. 77.

19. In some cases seizin will be presumed, as when one in possession claims title against a trespasser; but mere occupancy or possession, without color or claim of title, cannot be evidence of seizin, particularly as against a prior occupant; and without showing title, or a possession under a claim of title, one's possession or right by virtue thereof must be restricted to the land actually occupied: *Milnerd v. Reeves*, 1 M. 107.

20. Proof of possession under a claim of title founded upon a deed not emanating from the source of title or traced back to a person so claiming does not raise a legal presumption of seizin in fee; and if such possession were evidence of seizin, it would at most be a bare presumption, liable to be overcome by other proof, such as title in a third person: *Lull v. Davis*, 1 M. 77.

21. Color of title under a deed and occupancy of a part will constitute an adverse possession to a single lot except where there is an actual occupancy under a different claim: *Milnerd v. Reeves*, 1 M. 107.

Adverse possession as barring recovery of land, see LIMITATION OF ACTIONS, III, (d).

22. Lapse of time does not necessarily operate as a disseizin in law or in equity: *Compo v. Jackson Iron Co.*, 49 M. 39.

23. The holder of a legal title is not ousted by the act of a contract purchaser in going on the land with a team and ploughing for a few hours: *Goetchius v. Sanborn*, 46 M. 330.

24. Nor can a nocturnal entry by stealth and without right upon lands in the peaceable possession of another amount to a possession that enables the party entering to question the sufficiency of the true possessor's title or to set up an outstanding title in a third person: *Van Auken v. Monroe*, 38 M. 725.

25. A possession gained by force and held but a short time cannot be made the ground of an action: *Harrington v. Scott*, 1 M. 17.

Presumptions as to ownership and possession, see EVIDENCE, §§ 1539-1559.

Further as to possession and title, see those headings in the index.

III. ESTATES.

By the CURTESY or in DOWER, see those titles.

For life, see TENANTS FOR LIFE.

Of deceased persons, see ESTATES OF DECEASED.

26. The law has classified and defined all the various interests and estates in lands that it permits individuals to hold or create; and parties creating a particular species of estate cannot sever from it its essential legal incidents, as this would introduce a new estate unknown to the law, producing confusion and uncertainty: *Mandlebaum v. McDonell*, 29 M. 78.

27. The policy of our statutes favors vested estates rather than those which are contingent: *Rood v. Hovey*, 50 M. 395. See *Union Mutual Aid Assoc. v. Montgomery*, 70 M. 587 (June 8, '89).

28. An estate granted upon condition cannot vest and lapse from time to time according as the condition may be observed or disregarded by the grantee: *Conrad v. Long*, 33 M. 78.

As to conditions and limitations upon estates, see CONVEYANCES, III, (c); TRUSTS, I, (c), 2; WILLS, VIII.

29. One may be said to have an "estate in possession" (H. S. §§ 5524, 7852) unless there is some intervening estate in the land the owner of which has a paramount right of possession as against him: *Campau v. Campau*, 19 M. 122.

30. An estate in possession means merely an estate in present enjoyment, whether occupied in person, by tenants, or unoccupied: *Eberts v. Fisher*, 44 M. 551.

31. An estate subject to a long lease is nevertheless a present estate in possession, though there be neither direct occupation nor receipt of profits: *Toms v. Williams*, 41 M. 553.

32. An estate in expectancy in heirs is not created by the administrator's right to possession to pay debts: *Campau v. Campau*, 19 M. 122.

33. The rule in Shelley's Case is abolished by H. S. § 5544: *Fraser v. Chene*, 2 M. 81. See *Mandlebaum v. McDonell*, 29 M. 78, 92.

34. A remainder over to minor children named, in the event of a devisee's dying without issue, is valid as a contingent limitation upon a fee, and will vest in possession on the death of the first taker without issue living at the time of such death: *Goodell v. Hibbard*, 32 M. 47.

35. A remainder in fee may be created in favor of an unborn child: *See v. Derr*, 57 M. 369.

36. Under H. S. § 5540, which permits the creation of freehold estates to begin at a future day, a contingent remainder is not too remote which depends on the death of the husband of the grantee of the life-estate and on her own remarriage or death, as theirs are lives in being (H. S. § 5531): *Paton v. Langley*, 50 M. 428.

37. So long as a title is in fee in trust the validity of a reversion thereof does not properly come under discussion: *Thatcher v. St. Andrew's Church*, 37 M. 264.

38. The right of reversion or escheat, to which, at common law, prior to the statute *quia emptores*, the grantor of an estate in fee-simple was entitled on default of heirs of his grantee, never existed in Michigan; here the escheat could only accrue to the sovereignty, the state: *Mandlebaum v. McDonell*, 29 M. 78.

39. A future contingent estate is alienable in the same manner as an estate in possession, and may be conveyed by a deed of bargain and sale without covenants: *Goodell v. Hibbard*, 32 M. 47.

RECEIVERS.

I. APPOINTMENT.

- (a) *Jurisdiction; when granted.*
- (b) *Practice; application; notice.*
- (c) *Who may be appointed.*
- (d) *Review of appointment.*

II. REMOVAL; DISCHARGE.

III. SUITS BY AND AGAINST.

IV. RIGHTS, POWERS AND LIABILITIES.

V. COMPENSATION.

I. APPOINTMENT.

(a) *Jurisdiction; when granted.*

1. The appointment of receivers is governed in part by discretion and in part by rules of right. No court has unlimited discretion to put private estates into the hands of receivers: *Barry v. Briggs*, 22 M. 201.

2. Courts of equity cannot appoint receivers except when such appointment is allowed by law (H. S. § 6624): *Hazeltine v. Granger*, 44 M. 503.

3. The power to appoint a receiver of an estate assigned for the benefit of creditors is subject not only to all rights paramount to the assignment, but to legal conditions: *First National Bank v. Barnum Wire Works*, 58 M. 315.

4. The power of a court of equity by appointing a receiver to draw to itself the juris-

diction to try disputed titles is exceptional, and must rest on facts that render common-law remedies inadequate or improper in the particular instance: *Merchants' & M. Nat. Bank v. Kent Circuit Judge*, 43 M. 292.

5. The court of chancery has authority in proper cases to appoint a receiver to take possession of and hold, pending litigation, property the right to which is contested in that court. Circumstances held to constitute a proper case: *Tregaskis v. Detroit Superior Court*, 47 M. 509.

6. A bill in equity will not lie merely for injunction and receivership pending another suit in the same court covering all rights in the disputed property; interference with such rights can be restrained by some proceeding in the suit pending: *Beekman v. Fletcher*, 48 M. 156.

7. Under the act of June 21, 1837, the court of chancery has jurisdiction to appoint a receiver to take charge of the assets of a bank, where the corporation is insolvent, or when it refuses to pay its debts, or when it has violated any provision of its charter or of any law binding on it: *Attorney-General v. Oakland County Bank*, W. 90.

8. Where complainant by his bill shows a legal title to lands in possession of defendant, and from the answer of defendant a strong presumption arises of title in complainant, the court will grant a receiver, especially where there are large encumbrances on the lands, and no part of the rents and profits is applied to keep down the interest, and defendant is irresponsible, and is holding over against his own deed: *Payne v. Atterbury*, H. 414.

9. Where defendants held valuable real estate under a trust deed executed after one of them had prosecuted a petition to the probate court, alleging that the grantor was an incompetent person, and where differences have arisen between them and the rest of the grantor's family as to the management of the estate, and where they have disregarded the wishes of the grantor and of the family, and have failed to give bonds, or to account specifically for the rents and income, it is proper to order a receiver to take charge of the estate, giving bonds: *Hodges v. McDuff*, 69 M. 76 (March 2, '88).

10. Upon a creditor's bill, where an execution has been returned unsatisfied, chancery has a broad discretion in appointing a receiver, and the validity of such appointment cannot be reviewed on an appeal from an order holding a party in contempt for not assigning to such receiver: *Bagley v. Scudder*, 66 M. 97.

11. A receiver will not be appointed under

a judgment creditor's bill, filed on an execution returned unsatisfied nearly nine years before: *Gould v. Tryon*, W. 353.

12. The irregularity of the appointment of a receiver under a creditor's bill is no reason for defendant's objecting to submit to examination: *Howard v. Palmer*, W. 391.

13. One to whom a debtor has conveyed his property to keep it beyond the reach of his creditors will be held to be a trustee for their benefit, and will be liable for all the property in his hands when suit is brought against him. But a receiver will not be appointed over one charged with being such a trustee, when there is no allegation that he is insolvent, transient or irresponsible, or that the fund is in a hazardous condition: *Thayer v. Swift*, H. 430.

14. H. S. § 8112 contemplates the appointment of a receiver who may directly sue persons supposed to be covering property for a fraudulent debtor: *Stoeckle v. Ehlers*, 37 M. 261.

15. Where the assignees under a common-law assignment for the benefit of creditors have ceased to act because they supposed themselves displaced by proceedings taken under the assignment law of 1883, which was held unconstitutional, a receiver may be appointed in their place: *Commercial Nat. Bank v. Mosser*, 57 M. 336.

16. So, if the assignee does not do his duty, or in case of fraud or failure to qualify, the court may appoint a receiver: *Scott v. Chambers*, 62 M. 532.

17. A receiver ought not to be appointed in a proceeding for the partition of property theretofore left in the hands of one of the parties to manage in the common interest, if there is no allegation against him of insolvency: *Pierce v. Pierce*, 55 M. 629.

18. An intestate's partner was his administrator, and was charged with confusing the partnership property with his own, and seeking to defraud those who were concerned in the intestate estate. The administrator died, and in his turn had an administrator, who filed a bill for an accounting and settlement as between the several estates. It did not appear that the partnership estate was being wasted, or that there was any hindrance to the investigation of its affairs, and there was evidence to the contrary. Held, that there was no ground for appointing, *pendente lite* and on defendant's prayer, a receiver whose custody should cover the deceased administrator's property: *Perrin v. Lepper*, 56 M. 351.

19. It is no objection to the appointing of a receiver to take charge of partnership effects

that one of the partners has assigned his interest therein to a third person: *Kirby v. Ingersoll*, 1 D. 477.

20. An order appointing a receiver to take possession of and collect certain partnership accounts was unwarranted where the parties had themselves fully agreed how the accounts should be collected, and defendants were responsible: *Simon v. Schloss*, 48 M. 233.

21. An order for receivership in a partnership case should be of all the partnership estate. If it is of property in a particular place only, and does not describe that or distinguish it from the individual property of the partner who is assumed to be in possession and to have property there, it is erroneous: *Morey v. Grant*, 48 M. 326.

22. A receivership will not be granted to deprive a surviving partner of the possession of the firm property, unless upon proof of mismanagement or danger to the partnership effects: *Connor v. Allen*, H. 371.

23. The only grounds for appointing a receiver to interfere with the possession of a sole surviving partner are his grievous misconduct or incapacity: *Barry v. Briggs*, 22 M. 201.

24. A surety on the bond of a residuary legatee cannot have a receiver appointed to take charge of the assets of the estate: *McElroy v. Hatheway*, 44 M. 399.

25. One who has taken a second mortgage on chattels cannot have a receiver appointed and an injunction issued against the exercise of rights under the prior mortgage, unless he shows that, in taking his security, he has been defrauded into thinking there was no prior lien, or shows that such lien was itself fraudulent. And if defendant shows himself responsible his possession cannot be interfered with until his fraud is established: *Caulfield v. Curry*, 63 M. 594.

26. A borrower, after making payments to a receiver appointed for his creditor in proceedings to which he was not a party, cannot afterwards, in proceedings against himself for the enforcement of his debt, question the validity of his appointment: *Burton v. Schildbach*, 45 M. 504.

27. The validity of the appointment of a receiver cannot be collaterally questioned in an action by him upon an undertaking for costs given in compliance with an order of court, the defendants having fully recognized the receivership: *Skinner v. Lucas*, 68 M. 424 (Feb. 2, '88).

As to appointment of receivers for corporations, see CORPORATIONS, §§ 294-300, 303.

As to appointment of receivers in foreclosure cases, see MORTGAGES, §§ 634-638.

(b) *Practice; application; notice.*

28. Affidavits are not admissible to contradict the answer on motion for a receiver: *Connor v. Allen*, H. 371.

29. A receiver cannot be appointed as a preliminary to filing a bill and commencing suit, and without any notice to parties interested in the property placed in his hands: *Jones v. Schall*, 45 M. 379.

30. A receiver cannot be appointed when no suit is pending concerning the property of which he is put in charge: *Merchants' & M. Nat. Bank v. Kent Circuit Judge*, 43 M. 292.

31. Courts of equity are averse to appointing receivers upon an *ex parte* application without notice to defendants whose rights are to be affected: *Turnbull v. Prentiss Lumber Co.*, 55 M. 387.

32. It must be an extraordinary case which would justify even an appointment *ex parte*, and some special circumstances must be shown rendering it necessary to put a receiver in possession to prevent irreparable loss: *Ibid.*

33. The rule is that a receiver will not be appointed before answer, unless it appears that there is danger to the property or fund by the insolvency of the party in possession or from some other cause; but when justice requires it, and the merits appear to demand it, upon the hearing of which due notice is given, one will be appointed: *Ibid.*

34. Without a showing of necessity a receiver should not be appointed to divest possessory rights before a hearing on the merits: *McCombs v. Merryhew*, 40 M. 721.

35. Although the cause stood upon demurrer, an order for a receiver under a creditor's bill was granted on a special motion, of which notice was given to defendant's solicitor, who did not appear to oppose it: *Howard v. Palmer*, W. 391.

36. And where insolvency was alleged and not denied on the application, and where there was danger of misappropriation or waste of assets, an appointment of a receiver on motion and notice was sustained, though an issue on demurrer was pending: *Turnbull v. Prentiss Lumber Co.*, 55 M. 387.

37. But an order appointing a receiver *ex parte* while the issue stood upon demurrer, and while defendant was exercising its corporate functions and conducting its business as usual, was reversed: *Cook v. Detroit & M. R. Co.*, 45 M. 453.

38. A receiver should not be appointed for a copartnership before the case is ripe for hearing, except upon an adjudication of co-

partnership and with decree for accounting: *Morey v. Grant*, 48 M. 326.

39. Possession of lands cannot be given to a receiver by a preliminary injunction, and appeal would lie as from a final order from such a premature adjudication of the merits, since it entails a surrender of rights or the expense of a preliminary appeal: *Arnold v. Bright*, 41 M. 207.

40. An *ex parte* order without notice, obtained by a complainant not a judgment creditor, appointing a receiver, and directing a defendant who held a chattel mortgage assigned to him by his co-defendant, and alleged to be fraudulent, to turn the same over to the receiver to collect, and hold the proceeds until the respective rights of the parties are determined, cannot lawfully be enforced, and should be expunged as soon as possible: *Sailing v. Johnson*, 25 M. 489.

(c) *Who may be appointed.*

41. An officer of a corporation may be appointed its receiver: *Covert v. Rogers*, 38 M. 363.

42. The law partner of the solicitor for a complainant in foreclosure cannot, unless by consent of all persons interested in the results of the receivership, be made receiver in the suit: *Merchants' & M. Nat. Bank v. Kent Circuit Judge*, 43 M. 292.

(d) *Review of appointment.*

43. In reviewing the action of a circuit judge in appointing a receiver, the supreme court considers whether the discretion vested in him has been abused, and whether a right has been impaired by such appointment: *Turnbull v. Prentiss Lumber Co.*, 55 M. 387.

44. A void order appointing, on an *ex parte* application, a receiver to manage a corporate business, was vacated by *mandamus*: *Port Huron & G. R. Co. v. St. Clair Circuit Judge*, 31 M. 456.

Appointment of receiver for assigned estate is not reviewed on *MANDAMUS*, see that title, § 100.

As to appeals from appointment or refusal to appoint receiver, see *supra*, § 39; also, *APPEAL*, §§ 76-87.

II. REMOVAL; DISCHARGE.

45. The exercise of the power to remove a receiver lies within the discretion of the court, and depends on the peculiar circumstances of each case: *First National Bank v. Barnum Wire Works*, 60 M. 427.

46. Where a petitioner would not be prejudiced by not removing the receiver — as where all that the petitioner can ask is that he shall have payment of his debt in full, when established, which relief is already secured to him by the action of the court below — and where the other creditors are satisfied with the receiver he should not be removed: *Ibid.*

47. The insolvency of a receiver may be sufficient reason for superseding him: *Brown v. Vandermeulen*, 41 M. 418.

48. The court may discharge a receiver appointed for a bank, where it is satisfied that the interests of all concerned will be best subserved by permitting the bank to manage its own affairs; but before discharging him the court should look into the bank's condition and make the order absolute or conditional as the case may require: *Fay v. Erie & K. R. Bank*, H. 194.

That an order discharging a receiver when his accounts shall be approved is not final, see APPEAL, § 90.

III. SUITS BY AND AGAINST.

As to costs in receiver's favor when he sues for assessment, see COSTS, § 32.

49. The receiver appointed in supplementary proceedings at law on return of an execution unsatisfied can sue third persons at law or in equity as if he were an assignee; but in the proceedings themselves the judgment debtor only can be a party: *Prescott v. Pfeiffer*, 57 M. 21.

50. Where the rights of a receiver appointed in another state depend wholly upon the effect to be given to the judgments or decrees of the court making the appointment he cannot sue in the courts of this state, in reference to real property situated here or in reference to personal property and rights in action. to the prejudice of creditors in this state: *Graydon v. Church*, 7 M. 36.

51. Where a receiver was appointed in a creditor's suit in another state, and the debtor made a general assignment to the receiver of all his property, reciting in it the proceedings had in the cause, the assignment being in due form for the transfer of an interest in lands under our statutes, *held*, that the assignee might file his bill in chancery in this state to foreclose a mortgage interest, or to enforce a right of redemption held by the debtor at the time of the assignment in lands in this state. He sues, in such case, not strictly in his official character as receiver, under his foreign appointment, but as holding the legal interest in the property under the assignment: *Ibid.*

52. The recital in the assignment of the proceedings prior to the appointment are to be taken as true, so far as material; and the courts of this state will recognize the complainant substantially as trustee for the creditors, and will assist him to collect and render the property available for the purposes of the trust; but will not concern themselves with any question as to the distribution of the proceeds, as between him and the creditors, nor interfere between him and the court by whose appointment he acts. It is for that court to hold him to his accountability for the trust property, especially where all parties reside in that state, and the creditors have not appealed to this court for any such purpose: *Ibid.*

53. The receiver of an assignee's estate is the proper party to bring suit to recover property fraudulently sold by the insolvent debtor: *Angell v. Pickard*, 61 M. 561. See *Sweetzer v. Higby*, 63 M. 13.

54. Redress against the receiver of an assigned estate for injury to private rights therein must be had by petition in the court appointing him, and not by original bill. But the form of the remedy does not destroy its substance, and the action of the court thereon is reviewable on appeal if the fund in which the complaining party claims an interest is alleged to be liable to such danger as to be within the risks against which the law gives protection: *First National Bank v. Barnum Wire Works*, 58 M. 315.

55. A receiver cannot be sued or garnished without leave of the court which appointed him: *Tremper v. Brooks*, 40 M. 333.

56. When a receiver has been appointed no one can implead him in the same proceeding without leave of court, or take out of his hands the control of the proceedings: *Scott v. Chambers*, 62 M. 532.

57. The receiver of an insolvent estate acting in place of an assignee is appointed by an order made on the chancery side of the court; but a proceeding against him by petition to establish a claim in full to the exclusion of the rights of other creditors is in no proper sense an equitable proceeding: *Grammel v. Carmer*, 55 M. 201.

58. Whether an action for a railway injury lies against the receiver of the company in whose employment it was incurred, *quere*: *Smith v. Flint & P. M. R. Co.*, 46 M. 258.

59. A receiver who, under color of office, gets possession of property that does not belong to him, is personally liable in replevin; naming him by his title may stand as descriptive. Whether he could have recourse to his fund to pay the judgment collected against

him is a matter to be settled by the court that appointed him: *Gutsch v. McIlhargy*, 69 M. 877 (April 6, '88).

IV. RIGHTS, POWERS AND LIABILITIES.

As to the powers of receivers appointed in garnishment proceedings, see GARNISHMENT, §§ 149, 150.

60. The receiver's custody is that of the court which appointed him: *Tremper v. Brooks*, 40 M. 333.

61. A receiver cannot summarily eject the occupant of land and take possession of his personalty without a showing of necessity affecting the disputed interests in the land, and a trial of the possessor's right to the personalty; and an order authorizing him to do so, granted on a mere special proceeding, will not be sustained: *McCombs v. Merryhew*, 40 M. 721.

62. A receiver cannot employ a solicitor in the cause as his own counsel, unless with the consent of all parties concerned in the results of the receivership, which may include persons not parties to the suit: *Merchants', etc. National Bank v. Kent Circuit Judge*, 43 M. 202.

63. Courts should not interfere with the discretion of receivers appointed to carry on a business, unless some abuse is alleged or shown: *Taylor v. Sweet*, 40 M. 736.

64. An order requiring a receiver appointed in a suit for the settlement of partnership accounts to pay certain moneys from the funds to each of the partners on application, and without reference to the state of their accounts, and to charge them with the sums so paid to be accounted for on final settlement, was reversed as improvident: *Ibid*.

65. A receiver appointed on the voluntary dissolution of a corporation becomes vested with all the corporate interests except the power to do business: *Cady v. Knit Goods Manuf. Co.*, 48 M. 133.

66. The purchaser of a note at a receiver's sale is not bound by the receiver's statement of the amount due, but is entitled to recover whatever may be due upon it: *Newberry v. Troubridge*, 13 M. 263.

Order for sale of assigned property by receiver held appealable, see APPEAL, § 88.

67. A receiver for a corporation organized under a void law can demand an accounting in equity for a debt secured by a mortgage executed to such invalid corporation: *Burton v. Schudbach*, 45 M. 504.

68. A receiver appointed *ex parte* for a bank before decree of forfeiture holds pro-

visionally; and though such decree might justify the relating back of his title to the beginning of the receivership, yet this title, until adjudication, is conditional and inchoate, and amounts to no more than a possessory right for the purposes of the suit: *Montgomery v. Merrill*, 18 M. 338.

69. When the suit in which a receiver was appointed is disposed of, he is left a mere bailee, in respect to the property or its proceeds, for the parties entitled; and is not an officer of the court, and can only be called to account by the parties in individual suits: *Maltz v. Fletcher*, 52 M. 484.

70. Where a receiver's right is purely for the purposes of a suit, it cannot outlast the suit or be used for any purposes not justified thereby: *Montgomery v. Merrill*, 18 M. 338.

71. A receiver — *e. g.*, of an estate assigned for the benefit of creditors — is a trustee, and subject to the general duties requiring impartiality; he cannot collude with any one, or prefer one set of interests to another: *First National Bank v. Barnum Wire Works*, 53 M. 315, 60 M. 487.

72. A receiver appointed under the statute relating to assignments for creditors represents all the interests and stands in the place of the assignee: *Barnum Wire Works v. Speed*, 59 M. 278; *Angell v. Pickard*, 61 M. 561.

The receiver of a corporation does not represent stockholders or creditors of previous corporation, see CORPORATIONS, § 306.

Order requiring garnishee to surrender notes to receiver, vacated by MANDAMUS, § 55.

73. Where the appointment of a receiver has been determined by the supreme court to be void for want of jurisdiction, the court which made the appointment may order him to restore the property to defendants, and may enforce its order by proceedings as for contempt: *People v. Jones*, 33 M. 303.

V. COMPENSATION.

74. Where a receiver's appointment was void for want of jurisdiction he could not have any benefit from it, or retain money collected by him as receiver to compensate his services: *People v. Jones*, 33 M. 303.

RECORDING ACTS.

I. WHEN RECORDING REQUIRED OR ALLOWED.

(a) *When recording essential.*

(b) *What instruments need not be recorded.*

I. WHEN RECORDING REQUIRED OR ALLOWED—continued.

(c) *What instruments entitled to record.*

1. As to the nature of the instrument.
2. As to execution, acknowledgment, etc.

II. RECORDING.

- (a) *In general; what sufficient.*
- (b) *Priority of record.*
- (c) *Alteration of record.*

III. EFFECT OF RECORD.

- (a) *In general.*
- (b) *Record as notice.*
- (c) *Record as evidence.*

IV. WHO PROTECTED AGAINST UNRECORDED INSTRUMENTS.

- (a) *In general; subsequent purchasers.*
- (b) *Purchasers for a valuable consideration.*
- (c) *Bona fide purchasers.*

I. WHEN RECORDING REQUIRED OR ALLOWED.

(a) *When recording essential.*

As to filing and effect of filing or failing to file CHATTEL MORTGAGES, see that title, §§ 66-96, 115, 118, 120.

1. Recording is not essential to the validity of a deed as between the parties; it is only for the preservation of evidence and for notice to subsequent purchasers and encumbrancers: *Sinclair v. Slawson*, 44 M. 123.

2. Recording is not necessary to give a deed effect as between the parties; so held where an unrecorded deed was destroyed by agreement after delivery: *Gugins v. Van Gorder*, 10 M. 523.

3. A grantee's neglect to record his deed does not avoid it as against the grantor. So, under the ordinance of 1787, an unrecorded deed was good between the parties: *Godfroy v. Disbrow*, W. 260.

4. An unrecorded deed is good between the parties and against all others rightly chargeable with notice: *Brown v. McCormick*, 28 M. 215.

As to notice, see *infra*, IV, (c); also, NOTICE.

5. A deed may be effectual as a conveyance though it is not recorded: *Wilt v. Cutler*, 88 M. 189, 192.

6. One may have an undoubted title to lands though one or more of the conveyances through which he acquires title are unrecorded: *Smith v. Fiting*, 37 M. 143.

7. An unrecorded defeasance is void only against purchasers for a valuable consideration

without actual notice of its existence (H. S. § 5886): *Columbia Bank v. Jacobs*, 10 M. 349.

8. A tax-purchaser took a decree by default quieting his title as against the claims of a certain person who had in fact previously conveyed the land to one who did not record the deed and who was not made a party to the suit. Held, that the neglect to record the deed did not make the decree binding upon the grantee: *Smith v. Williams*, 44 M. 240.

Effect of failure to record plat, see PLATS, §§ 14-16.

(b) *What instruments need not be recorded.*

9. Patents of lands from the United States do not come within the purview of the recording laws, and the same rule applies to all conveyances by the United States as owner of the original domain. A subsequent recorded deed does not, therefore, take precedence over a prior unrecorded deed from the governor and judges on behalf of the United States: *Moran v. Palmer*, 13 M. 367.

10. The validity or operation of a land-patent from the federal government is not impaired by neglecting to record it in the registry of the county where it lies: *Sands v. Davis*, 40 M. 14.

11. The validity of a tax-deed does not depend on its being recorded: *Fells v. Barbour*, 58 M. 49.

12. An agreement in the nature of a defeasance is required to be recorded only when it relates to a conveyance that on its face purports to be absolute: *Russell v. Waite*, W. 81.

13. Under C. L. 1871, § 6921, it was not necessary, in order to cut off the equity of redemption, to record a sheriff's deed on foreclosure by advertisement. (H. S. § 8505 says that such deeds shall be recorded, which is probably directory only): *Sanford v. Cahoon*, 63 M. 223.

14. Want of registry does not invalidate an assignment for the benefit of creditors as against an attachment subsequently levied: *Palmer v. Mason*, 42 M. 146.

15. An assignment for the benefit of creditors need not be recorded to defeat an attachment levied within ten days after it was made (H. S. § 8739): *Gott v. Hoschna*, 57 M. 413.

16. H. S. § 8498, requiring any assignment of a mortgage to be recorded before the mortgage can be foreclosed by advertisement, does not refer to such transfer as results from the operation of law; e. g., from the mortgagee's death: *Miller v. Clark*, 56 M. 337.

17. An assignment of a certificate of purchase of public lands is properly of record in the land-office at Washington: *Clark v. Hall*, 19 M. 356.

(c) *What instruments entitled to record.*

1. As to the nature of the instrument.

19. An ante-nuptial contract, duly acknowledged, whereby the prospective husband agreed that in case the wife survived him his administrator should convey to her by a proper deed certain described land, and containing mutual covenants against mortgaging the land during the marriage without joint action, was held to convey such an interest in land as entitled it to be recorded: *Aultman v. Pettys*, 59 M. 482.

20. Land was conveyed which was subject to a mortgage, the seller taking back a mortgage to secure a negotiable note for part of the purchase price, and giving the purchaser an agreement to pay off and discharge the first mortgage, and, in case of his failure to do so, that the purchaser might pay it, and have the amount applied on the mortgage given by him. This agreement was witnessed, acknowledged and recorded. Held that, as such instrument was not the subject of record, an assignee of the second mortgage who received the same for a valuable consideration, before it was due, and without actual notice of this agreement, was not affected thereby: *Dutton v. Ives*, 5 M. 515.

21. H. S. § 5690 authorizes powers of attorney to be recorded in the records of deeds: *Morse v. Hewett*, 28 M. 488.

22. Whether the act of 1875 (H. S. § 6119), allowing certificates of sheriffs' sales on executions to be recorded applied to sales already made, *quere*: *Drake v. McLean*, 47 M. 102.

23. The registry law of 1888 had reference to conveyances of the real estate, or interest in law, only, except where a trust is created or declared in writing, which, to be notice to subsequent purchasers, the statute (R. S. 1888, p. 260) required to be recorded; and, therefore, a mortgage of lands that were held by the mortgager under a bond for a deed was held not entitled to record, being a mere equitable mortgage: *Wing v. McDowell*, W. 175.

24. A certified copy of the record in one county of a deed is not authorized to be recorded in another county: *Shotwell v. Harrison*, 22 M. 410. (See, however, provision in case of lost deeds, H. S. § 5716.)

25. Under act 262 of 1887, a mortgage is not entitled to record unless it gives the mort-

gagee's name and residence; said act is held valid: *People v. Sanilac Supervisors*, 71 M. 16 (June 22, '88). See REGISTER OF DEEDS, § 5.

2. As to execution, acknowledgment, etc.

See, generally, CONVEYANCES, §§ 40-128.

26. There was no registry at common law; and, therefore, the validity of a deed for purposes of registry can extend no further than the affirmative provisions of the recording law: *Galpin v. Abbott*, 6 M. 17.

27. Under the law in force in 1830, a deed not sealed could not lawfully be recorded: *Starkweather v. Martin*, 28 M. 471.

28. A deed whereto one of the witnesses, being unable to write, put his mark, is nevertheless entitled to record: *Brown v. McCormick*, 28 M. 215.

29. Where two witnesses to the execution of a deed are required to entitle it to record, the deed is not entitled to record as a conveyance by a grantor whose signature is attested by but one witness, although there are two witnesses to another grantor's signature: *Hall v. Redson*, 10 M. 21.

30. Under the acts of 1820 and 1827, and the code of 1833, deeds executed out of Michigan required, to entitle them to record, two witnesses, the same as if executed here: *Galpin v. Abbott*, 6 M. 17; *Brown v. Cady*, 11 M. 535; *Van Auken v. Monroe*, 38 M. 725.

31. To entitle a deed to registry its execution by the grantor must be proved or acknowledged, and when acknowledged the evidence of acknowledgment must appear by the certificate: *Buell v. Irwin*, 24 M. 145.

32. A deed duly executed and acknowledged by a man is admissible to record as his sole deed, although the certificate as to his wife's acknowledgment is defective: *Rayner v. Lee*, 20 M. 384.

33. Under the act of 1820 and of April 12, 1827 (Code 1833, p. 281), an acknowledgment taken and certified in another state by an authorized officer, according to the laws of such state, entitled the deed (if executed as our laws require) to record without further evidence or certificate as to the officer or his signature: *Ives v. Kimball*, 1 M. 308; *Lacey v. Davis*, 4 M. 140; *Galpin v. Abbott*, 6 M. 17; *Hogelskamp v. Weeks*, 37 M. 422.

34. So that it was immaterial in such case that the clerk's certificate attached to that of the commissioner of deeds, before whom the acknowledgment was taken, was not sealed, no certificate being required: *Hogelskamp v. Weeks*, 37 M. 422.

35. But, under H. S. § 5660, such certificate of a clerk of a court of record being necessary (unless the acknowledgment is taken before a commissioner of deeds for Michigan), it must be under seal or the deed cannot be recorded: *Pope v. Cutler*, 34 M. 150.

36. And if the acknowledgment out of the state is made before a Michigan commissioner of deeds, his certificate thereto must be under seal: *Buell v. Irwin*, 24 M. 145.

37. A deed conveying Michigan lands was executed and acknowledged in New York, and several years afterwards the certificate of the proper clerk was made and attached, certifying that the deed was made and acknowledged according to the "existing" law of New York. *Held* a sufficient certificate to entitle the deed to record: *Harrington v. Fish*, 10 M. 415.

38. The certificate of a county clerk — it not appearing that he was the clerk of a court of record — dated in 1855, verifying the acknowledgment of a deed without witnesses executed out of the state in 1843, *held* not to entitle the deed to record: *Donahue v. Klassner*, 22 M. 252.

39. A deed executed out of the state was received for record and recorded Aug. 2; but the certificate required by the statute to entitle it to record was dated Aug. 12. Whether, if the certificate was correctly dated, and it was attached to the deed after the deed was recorded, the whole deed should not have been re-recorded in order to cut off prior unrecorded deeds, *quere*: *Oliver v. Sanborn*, 60 M. 346.

That certificate of acknowledgment had (formerly) to be sealed to entitle plat to record see PLATS, § 10.

II. RECORDING.

(a) *In general; what sufficient.*

That the register will not be compelled by *mandamus* to record deed that he holds in escrow as a private person, see REGISTER OF DEEDS, § 4.

40. The act of April 12, 1827, "concerning mortgages," was not controlled in relation to the record of mortgages by the act of the same date "concerning deeds and conveyances;" and where, in compliance with the terms of the former act, a mortgage upon land in the city of Detroit was recorded in the county registry, such record was *held* valid: *Weed v. Lyon*, H. 363; *Beals v. Hale*, 4 How. (U. S.) 37.

41. Powers of attorney may be registered

in the books of deeds of any county where the lands lie to which they relate: *Morse v. Hewett*, 28 M. 481.

42. Under the code of 1833, where a deed absolute in form was shown by contemporaneous writing to be only a mortgage, it should have been recorded as a mortgage; and if recorded as a deed, the record would not give it priority over a prior unrecorded mortgage: *Thompson v. Mack*, H. 150. (See H. S. §§ 5674, 5675.)

43. A writing was recorded as a separate paper, which referred "to the within mortgage," but did not in any way describe or identify the mortgage. It was *held* not to be evidence that the writing recorded was indorsed upon any instrument recorded with it, as that was an extrinsic fact not within the purview of the registry laws: *Bassett v. Hathaway*, 9 M. 28.

44. A mortgage was assigned by indorsement referring to it as "the within mortgage," and this was recorded in the same volume but not on the same page with the mortgage, the two being connected by cross-references. *Held* a sufficient recording: *Soule v. Corbley*, 65 M. 109.

45. It is not a valid objection to the record of a deed that the name of one of the subscribing witnesses cannot be made out, and that it is apparently a *fac-simile* of the original: *Whitwell v. Emory*, 8 M. 84.

46. In the certified copy of the record of a mortgage there were no marks opposite the signatures indicating seals; but there was a certificate of the register of deeds that the words "not sealed" were entered in the record opposite the names in the handwriting of his predecessor. *Held*, that such certificate was not legal evidence. The register is bound to record all instruments properly executed, but he cannot make any notes or memoranda in the record not authorized by law: *Farmers', etc. Bank v. Bronson*, 14 M. 361.

47. Where it appeared that, under a law permitting the registry of only sealed instruments, the proper officer had recorded in the appropriate place an instrument in the form of a warranty deed, purporting to be acknowledged and dated at a time when it was the common and lawful course to seal conveyances, and contrary to official duty to take the acknowledgment unless the conveyance was sealed, and where the conclusion, attestation clause and acknowledgment all spoke of it as under seal, it was *presumed* that the original was sealed. It was further *held*, that, whether or not it was the duty of the register under the law as it then stood (in 1830) to put

something of his own upon the record to indicate that the paper he recorded was sealed, his omission to do so would not overcome the presumption that the instrument itself was sealed: *Starkweather v. Martin*, 28 M. 471.

48. Where a deed dated Feb. 20, and purported to have been acknowledged on that day, but indorsed with a certificate of its having been recorded Feb. 18, the discrepancy was held referable to clerical mistake: *Munroe v. Eastman*, 81 M. 283.

49. In copying a mortgage into the record the register omitted the name of the mortgagee. Held, that this did not defeat the mortgage record as notice to subsequent purchasers, because the entry in the entry-book constituted constructive notice until the actual record, and, as such entry gave the mortgagee's name, the entry-book and the record-book together afforded full information: *Sinclair v. Slawson*, 44 M. 123.

50. Where a mortgage was assigned by indorsement thereon, and the instrument, when produced, bears the certificate of registry required by the statute with register's attestation at the date of the assignment, it cannot be presumed that the assignment was not properly recorded: *Jakway v. Jenison*, 46 M. 521.

51. A failure upon the register's part to sign the record of a deed, as is customary, does not render the record a nullity: *Wilt v. Cutler*, 88 M. 189.

52. In the absence of evidence to the contrary, it is presumed that the register has done his duty as a public officer: *Ives v. Kimball*, 1 M. 308.

(b) *Priority of record.*

53. When a paper is left with the register with the understanding that it is not to go upon record until further directions, the register, when he receives such directions, must record it as of that time, and not as of the time when it was left with him: *Brigham v. Brown*, 44 M. 59.

54. Where a mortgage is given, manifestly as a cover for the benefit of the mortgager, and the latter is sent with it to the registry, where he gives directions for leaving it off the record, the mortgagee will be bound by these directions, and will not be at liberty to rely, as against them, upon a false certificate of recording which he obtains: *Ibid*.

55. A debtor gave a mortgage for the debt, the *bona fides* of which was not disputed, and it was at once placed on record. Subsequently it was found that another party had a mortgage from the same mortgager on the same

land, purporting to be given and recorded first. This mortgage had no debt to support it, unless it was one owing to a firm of which the mortgagee was a member, and for which other mortgages for more than its amount were in existence. The register of deeds testified that it was left with him by the mortgager with directions not to place it upon record until further directions were given, and that he never received any such directions, but his clerk recorded it without orders. Held, that the spreading it upon the record book, under such circumstances, was not a recording which entitled it to priority: *Ibid*.

56. The entry required by H. S. § 5675 to show the date at which a deed is received and its order is the only constructive record until the deed is actually recorded, and where such entry is omitted there can be none until that time: *Shelden v. Warner*, 45 M. 638.

57. As a rule, if the grantor of lands, on taking back a purchase-money mortgage, has both conveyances promptly recorded, he does all the law requires of him to protect his rights, and will not be affected by any previous conveyance which, without his knowledge, his grantee, the mortgager, may have placed on record before obtaining title: *Heffton v. Flanigan*, 37 M. 274.

58. In a foreclosure suit the evidence was examined and held to show that a deed which purported to bear date and to have been acknowledged and recorded earlier than complainant's mortgage was in fact made and recorded later: *Shelden v. Warner*, 45 M. 638.

59. The priority of record of two mortgages upon a vessel which were filed and recorded on the same day was decided in favor of the one bearing the earlier certificate: *Hoffman v. McMorran*, 52 M. 818.

Priority fraudulently obtained set aside, see MORTGAGES, §§ 203, 204.

(c) *Alteration of record.*

60. The registry of a conveyance or plat cannot be altered so as to make it conform to a subsequent acknowledgment: *Burton v. Martz*, 38 M. 761.

61. Alterations or interlineations appearing in the public record of a deed are presumed, in the absence of evidence to the contrary, to have been made in a proper manner and by a person authorized to make them: *Hommel v. Devinney*, 39 M. 522.

62. And where the record, in Wayne county, of a deed showed an interlineation, the mere fact that a certified copy of the record from St. Clair county, of the same

deed, showed no such interlineation was *held* to raise no presumption of an improper change or alteration of the Wayne record: *Ibid*.

III. EFFECT OF RECORD.

(a) *In general.*

63. Where successive conveyances of the same property have been made and only the later one has been recorded, the transfer of title thereunder is not by force of the conveyance, for the grantor has no title, but results from the operation of the statute, which provides (H. S. § 5688) that an unrecorded conveyance shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate whose conveyance shall be first duly recorded: *Burns v. Berry*, 49 M. 176.

64. The policy of the recording law in giving the preference to the first recorded conveyance is a legislative, not a judicial, question; the design is to insure prompt recording: *Drake v. McLean*, 47 M. 102.

65. The design of the recording law is to prevent fraud by securing certainty and publicity in transactions relating to real estate; and the first purchaser should promptly record his conveyance: *Atwood v. Bearss*, 47 M. 72.

66. The object of registry laws is to protect *bona fide* purchaser against purchasers whose deeds have not been recorded: *Godfroy v. Disbrow*, W. 260; *Dutton v. Ives*, 5 M. 515; *Columbia Bank v. Jacobs*, 10 M. 349.

67. A record title is presumptively the better title, and creates a cloud upon the unrecorded title: *King v. Carpenter*, 37 M. 363.

68. The first deed recorded is presumptively the best; and the presumptions in favor of the holder of the legal title of record cannot be defeated without proof of an earlier right based on superior equities: *First National Bank v. McAllister*, 46 M. 397.

69. A registry law cannot have operation beyond the fair meaning of its terms: *Millar v. Babcock*, 25 M. 187.

70. The recording laws point out specifically the danger to which a party failing to record his title is exposed, and the courts cannot add to or extend it: *Smith v. Williams*, 44 M. 240.

71. A prior unrecorded deed is not defeated by a recorded conveyance of the grantor's "now remaining interest;" the two deeds may stand together: *Eaton v. Trowbridge*, 38 M. 454.

72. The recording law supplies the place of seoffment with livery of seizin, so that the

making and recording of a deed by one who has come of age revokes a deed made during infancy, and renders unnecessary an entry before giving deed of avoidance: *Haynes v. Bennett*, 53 M. 15.

Recording as evidence of delivery, see CONVEYANCES, §§ 137, 144, 146-148, 154; EVIDENCE, § 329; GIFTS, § 8.

As proof of acceptance, see ASSIGNMENT, § 176.

As assertion of title, see EJECTMENT, §§ 63, 70-73.

As utterance of forgery, see CRIMES, §§ 425, 437.

(b) *Record as notice.*

Foreign record is not notice: See CONFLICT OF LAWS, §§ 2-4.

As to purchasers without notice, see *infra*, IV, (c).

As to effect of filing notice *lis pendens*, see NOTICE, I, (e).

73. The notice implied from a statutory record is not defeated by a careless loss or accidental destruction; if the statute has once been complied with the effect as notice continues, even though the record may fail, for accidental reasons or otherwise, to give the desired information: *Heim v. Ellis*, 49 M. 241.

74. A record is not notice for any purpose not declared by statute: *Burton v. Martz*, 38 M. 761.

75. The proper registry of a deed or conveyance required by law to be recorded is notice to subsequent purchasers of the existence and contents of such deed or conveyance, in equity as well as at law: *Wing v. McDowell*, W. 175.

76. The record of a deed entitled to be recorded is notice to all the world of the title of the grantees therein: *Galpin v. Abbott*, 6 M. 17. Although the statute relating to deeds and conveyances does not explicitly declare that the record thereof shall be constructive notice to subsequent purchasers, such is the legal effect: *Atwood v. Bearss*, 45 M. 469.

77. The record of a deed is notice to all who deal with the grantor that in giving him credit they must not look to the property conveyed to satisfy the debt: *Hedstrom v. Kingsbury*, 40 M. 636.

78. The record of a deed of trust operates as notice, and if it negatives the trustee's power to mortgage property purchased, such mortgage is void: *Hannah v. Carnahan*, 65 M. 601.

79. A subsequent purchaser is charged with

notice of all that an examination of the records would have disclosed, whether he actually examined them or not: *Barnard v. Campau*, 29 M. 162; *Healey v. Worth*, 35 M. 166; *Larzere v. Starkweather*, 38 M. 96.

80. The purchaser of a mortgage is bound by such notice as is afforded by the registry of another mortgage of the same date but of subsequent record, and of which his vendor had actual knowledge: *Van Aken v. Gleason*, 34 M. 477.

81. Where a contract could be recorded like a conveyance (H. S. § 5689), anything is notice of the rights under it that would be notice in case of a deed: *Weisberger v. Wisner*, 55 M. 246.

82. The registry of an instrument not required by law to be recorded is notice to no one; so held of a mortgage given by one who held under a bond for a deed: *Wing v. McDowell*, W. 175.

83. The record of a deed that is not by law entitled to be recorded is notice to no one: *Dutton v. Ives*, 5 M. 515; *Galpin v. Abbott*, 6 M. 17.

84. Record of a void deed—such as that of a husband to his wife before the act of 1855—is not notice to any one of any possible equities between the parties to the deed: *Loomis v. Brush*, 36 M. 40.

85. Though the record of a defectively acknowledged conveyance is not evidence of the original instrument, yet under H. S. § 5727 it operates, if the conveyance was made in good faith and upon a valuable consideration, as notice of all the rights secured by the instrument: *Brown v. McCormick*, 28 M. 215.

86. Said H. S. § 5727 gives such operation to the record of a deed executed in another state and lacking any clerk's certificate of authentication of due execution: *Healey v. Worth*, 35 M. 166.

87. Also to a deed made in good faith and for a sufficient consideration, though there was but one witness to its execution: *Aultman v. Pettys*, 59 M. 482.

88. A record of a mortgage is not notice of a claim not mentioned therein: *Hinchman v. Town*, 10 M. 508.

89. As a general rule parties may rely upon the record as their guide in dealing with titles that appear there: *Reynolds v. Ruckman*, 35 M. 80; *Hull v. Swarthout*, 29 M. 249.

90. And the policy of the recording law requires that grantees who would have protection for latent equities in property that is being conveyed to them in undivided interests should see to it that the deed contains intelligible hints at least that there are equities, which a

legal conveyance by one grantee may not impugn: *Van Slyck v. Skinner*, 41 M. 186.

91. Where nothing in the record of the conveyance or conveyances to several persons of land in undivided interests indicates that they are not tenants in common, a mortgagee or grantee from one of them is not affected by partnership equities whereof he has no notice: *Adams v. Bradley*, 12 M. 346; *Reynolds v. Ruckman*, 35 M. 80; *Van Slyck v. Skinner*, 41 M. 186; *Hammon v. Paxton*, 58 M. 893.

92. As against any latent equities or parol agreements between a life-tenant and the remainder-man, whereby a building erected by the latter is to be personal property, one who takes a mortgage of the land from the latter while the latter is in possession is a *bona fide* purchaser, and the tenant is confined to his record title: *Stevens v. Rose*, 69 M. 259 (April 6, '88).

93. The subsequent grantees or encumbrancers of mortgaged premises have a right to rely upon the record as determining the amount of the mortgagee's claim. They will not be charged with notice of the conditions of the bond, to which the mortgage is collateral, but which are not expressed in the mortgage, though these of course will determine the rights existing between mortgager and mortgagee; and they will also be entitled to presume that payments made to the mortgager are applied upon the mortgage as it appears of record: *Payne v. Avery*, 21 M. 524.

94. The record of a mortgage given to secure future liabilities or advances which it is optional with the mortgagee to incur or advance is notice to a subsequent purchaser of the premises; but he is chargeable with notice only to the extent of the liabilities actually incurred prior to his purchase: *Ladue v. Detroit & M. R. Co.*, 18 M. 880.

95. An agreement to mortgage premises to secure an indebtedness not then existing was acknowledged by the party only to whom the mortgage was to be given, and was recorded. Held, that the record could not operate as constructive notice to any one claiming as subsequent purchaser or encumbrancer from the party who was to give the mortgage: *Farmers', etc. Bank v. Bronson*, 14 M. 361.

96. The record, in the registry of deeds, of a lease of a building, which lease by its terms provided that machinery attached by the lessee should be treated as personalty, is not notice to third persons of the existence of a lessor's lien upon such machinery: *Booth v. Oliver*, 67 M. 664.

97. H. S. § 5687, which provides that the recording an assignment of a mortgage shall

not be deemed such notice to the mortgagor as to invalidate payments by him to the mortgagee, applies to a constructive payment; *e. g.*, where, to get rid of the mortgage, he deeds the land on payment by another: *Goodale v. Patterson*, 51 M. 532.

98. Under H. S. § 6119 a certificate of a sheriff's sale of lands on execution is, when recorded, entitled to the same record privileges as any other "conveyance" (see H. S. § 5689) of land; and its record is constructive notice to subsequent purchasers: *Atwood v. Bearss*, 45 M. 469; *Drake v. McLean*, 47 M. 102.

99. Whether the record of a tax-title is constructive notice that the holder claims the land on which it rests, *quere*: *La Coss v. Wadsworth*, 56 M. 421.

100. A recorded plat is notice only of the platting and consequent dedication to the public of such interests only as the grantor possesses, and is not notice of any conveyance to private parties merely implied upon its face or in the acknowledgment: *Burton v. Martz*, 38 M. 761.

101. Where an error in a deed appears by construction, the record of the deed is notice to subsequent purchasers of the real land intended: *Anderson v. Baughman*, 7 M. 69.

102. A contract to give a mortgage was put upon record, but, by mistake in drafting it, only the starting-point in the description of lands was given. A mortgage upon the lands intended to be described was subsequently given and placed upon record. It was held that the record of the contract was not notice to the mortgagee, since no one could say from the contract what was the specific land upon which the mortgage mentioned in it was to be given: *Barrows v. Baughman*, 9 M. 218.

103. Whether, where a description is so framed that it may be intended for one lot as well as another, the record of the instrument is not sufficient to put a purchaser of either upon inquiry, *quere*: *Cooper v. Bigly*, 13 M. 463. Subsequently held that it is not: *Stead v. Grosfield*, 67 M. 289.

104. The recording laws cannot be made by equitable construction to embrace cases not within them, or to give constructive notice of things the records do not show; where a mistake is made in recording, a subsequent purchaser has a right, in the absence of actual notice of the mistake, to rely on the records as showing the exact facts: *Barnard v. Campau*, 29 M. 162.

105. Where the mortgagee's name was omitted in copying a mortgage into the record, constructive notice to subsequent pur-

chasers was supplied by the entry-book (which contained such name) and the record-book taken together: *Sinclair v. Slawson*, 44 M. 128.

106. A sheriff's notice of levy on execution, if filed and indexed as provided in H. S. § 6173, is constructive notice of the levy and of the execution creditor's rights and lien thereunder: *Ward v. Citizens' Bank*, 46 M. 832.

107. But to make such notice of levy constructive notice to subsequent purchasers, the description of the premises in the levy and notice must be sufficiently definite and certain to inform the public as to what particular land has been levied on: *Burrowes v. Gibson*, 42 M. 121; *Davis Sewing Machine Co. v. Whitney*, 61 M. 518.

See EXECUTIONS, § 155.

108. And in a case where the notice of levy filed with the register omitted a portion of the lands levied on, it was held that a subsequent purchaser was not affected with notice: *Campau v. Barnard*, 25 M. 384; *Barnard v. Campau*, 29 M. 162.

109. Filing in the register's office a certified copy of an attachment levy does not, it seems, operate as constructive notice to third parties; certainly not as to those whose rights have previously accrued: *Columbia Bank v. Jacobs*, 10 M. 349; *Millar v. Babcock*, 25 M. 137; *French v. De Bow*, 38 M. 708.

110. Nor, under the laws of 1841, was the deposit of a certificate of levy upon execution in such office notice to *bona fide* purchasers: *Campau v. Barnard*, 25 M. 384.

111. The record of a conveyance or encumbrance is not constructive notice to a prior encumbrancer: *James v. Brown*, 11 M. 25; *Cooper v. Bigly*, 13 M. 463; *Woods v. Love*, 27 M. 308; *Dewey v. Ingersoll*, 42 M. 17.

112. Therefore a prior mortgagee need not examine the records before releasing portions of the mortgaged premises, unless he has notice enough to put a prudent man on inquiry: *James v. Brown*, 11 M. 25; *Cooper v. Bigly*, 13 M. 463; *Dewey v. Ingersoll*, 42 M. 17.

As to what constitutes such notice, see MORTGAGES, §§ 463, 464.

113. A sheriff's certificate of an execution sale is not constructive notice to prior mortgagees, though regularly filed in the register's office; and an execution purchaser cannot, by reason of the filing of such certificate, be authorized to attack a foreclosure in chancery to which he was not made a defendant: *Woods v. Love*, 27 M. 308.

114. The constructive notice furnished by the record of a mortgage will not prevent suit for false representations to a purchaser as to

absence of encumbrances: *Weber v. Weber*, 47 M. 569.

That one is affected with notice of all that is contained in the recorded title whereunder he purchases, see NOTICE, §§ 74-85.

115. One who relies upon the records for the authenticity and validity of a deed does not stand in as favorable a position as does a good-faith holder of negotiable paper; and if the deed is a forgery, the question of good faith does not arise: *McGinn v. Tobey*, 62 M. 252. See NOTICE, §§ 113, 114.

(c) *Record as evidence.*

116. In the absence of a statute authorizing it the record of a deed is not primary evidence of the existence and genuineness of the original: *Brown v. Cady*, 11 M. 535; *Bradley v. Silsbee*, 33 M. 328.

117. The record of an instrument entitled by law to be recorded is *prima facie* evidence of the execution of the instrument: *Bassett v. Hathaway*, 9 M. 28.

118. The registry of a deed not entitled to be recorded is not evidence: *Buell v. Irwin*, 24 M. 145; *Pope v. Cutler*, 34 M. 150; *Van Auken v. Monroe*, 38 M. 725.

119. The record of a deed not properly executed is unauthorized, and cannot prove the existence of the original: *Brown v. Cady*, 11 M. 535; *Farmers', etc. Bank v. Bronson*, 14 M. 361.

120. Though in fact recorded, an unacknowledged deed cannot be proved by the record: *People v. Marion*, 29 M. 31.

121. An unauthorized record of a plat is not evidence of the validity and execution of the plat: *Grand Rapids v. Hastings*, 36 M. 122.

122. A book of plats, found in the office of the register of deeds, purporting to be plats of the various townships of the county, with the names of purchasers of sections and parts of sections marked thereon, is not evidence, as no law requires it to be kept in the registry: *Smith v. Lawrence*, 12 M. 431.

123. An entry which the register is not authorized or required to make is not evidence, though actually made by him: *Ives v. Kimball*, 1 M. 308; *Farmers', etc. Bank v. Bronson*, 14 M. 361.

124. Whether the want of any marks indicating seals, opposite the signatures in the

record of a mortgage, is proof that none were attached to the original, and would prevent the record, or a copy thereof, being evidence, *quere*: *Farmers', etc. Bank v. Bronson*, 14 M. 361.

125. Under the laws in force in 1830 as to the execution, sealing and registry of deeds, the absence from the record of a deed of any trace of the "device by way of seal" which a grantor was authorized to adopt as a sufficient seal does not warrant an inference that the original was unsealed, or justify the rejection of the record as evidence: *Starkweather v. Martin*, 28 M. 471.

126. Where a deed covering lands in different counties is recorded in one of them, a certified transcript of the record from that county is admissible in evidence in every part of the state: *Wilt v. Cutler*, 38 M. 189.

127. But the record in one county of a certified copy of the record in another county of a deed is not evidence of such deed: *Shotwell v. Harrison*, 22 M. 410.

128. In the absence of a statute authorizing it, a certified copy of a record, in the office of the secretary of state, of a state patent, is not primary evidence: *Bradley v. Silsbee*, 33 M. 328.

Record not excluded because made after suit begun: See EJECTMENT, § 181.

That unauthorized record may be used as secondary evidence of lost original, see EVIDENCE, § 1200.

As to proof by copy of record, see EVIDENCE, §§ 1184, 1185, 1193, 1194.

IV. WHO PROTECTED AGAINST UNRECORDED INSTRUMENTS.

(a) *In general; subsequent purchasers.*¹

129. Where a party claims priority under the recording laws he must show a compliance with their provisions in order to entitle him to such priority: *Thompson v. Mack*, H. 150.

130. He who claims the benefit of the registry laws must bring himself within them: *Sinclair v. Slawson*, 44 M. 123.

131. One who relies upon the recording laws to take from the real owner an actual title must make a case *strictissimi juris* and bring it within the statute in every particular; otherwise he can have no protection: *Heim v. Ellis*, 49 M. 241.

¹ "Every conveyance of real estate within this state, hereafter made, which shall not be recorded as provided in this chapter, shall be void as against any subsequent purchaser in good faith and for a valuable consideration of the same real estate, or of any portion thereof, whose conveyance shall be first duly recorded." R. S. 1846, ch. 65, § 20; H. S. § 5683.

132. One who seeks a benefit from the recording laws must incur all risks of the failure to put his papers properly on record, whether the fault be his or an officer's: *Barnard v. Campau*, 29 M. 163.

133. Where a purchaser under a second mortgage seeks relief against one who holds under a first mortgage, on the ground that the first was not filed or recorded until after the second, he must establish the case made by his bill or he cannot have relief: *Hoffman v. McMorran*, 53 M. 318.

134. The defence of a *bona fide* purchase for a valuable consideration can only be made by the purchaser himself or by some one claiming through his purchase: *Blanchard v. Tyler*, 12 M. 339.

135. By "subsequent purchaser" against whom, if his conveyance has been duly recorded, H. S. § 5683 avoids an unrecorded conveyance, is meant a subsequent purchaser from the same grantor: *Smith v. Williams*, 44 M. 240.

136. A tenant in common whose interest becomes severed by partition is a "purchaser for value" of the interest of his co-tenants in the lands set apart to him, so as to be protected against a previous execution, levy and sale of which he has no notice: *Campau v. Barnard*, 25 M. 381.

137. Attaching or judgment execution creditors are not "purchasers," within the meaning of the recording law, until the property attached or levied on has been sold in pursuance of law and has been purchased in by them: *Columbia Bank v. Jacobs*, 10 M. 349. (But see H. S. § 6173 as to the constructive notice now given by filing levy of execution.)

138. Therefore, before that time, they are not protected against prior unrecorded defeasances: *Ibid.*

139. By filing an attachment levy or by levying execution one does not become a *bona fide* purchaser so as to entitle him to object to the restoration of a third person's mortgages upon the land, which, by mistake of fact, were discharged of record before the execution levy: *French v. De Bow*, 38 M. 708.

140. One who bids in lands under an execution sale becomes a "purchaser" within the meaning of the registry laws, even though he does not yet receive the sheriff's deed; and if he records his certificate of sale he is entitled to protection against subsequent purchasers until he can receive his deed: *Atwood v. Bearss*, 45 M. 469; *Drake v. McLean*, 47 M. 102.

141. Purchasers or encumbrancers who be-

come such after the discharge of a mortgage is recorded are entitled to the same protection that the recording laws afford to subsequent purchasers or encumbrancers in good faith as against unrecorded conveyances; they can be affected only by actual notice, or notice of such facts as should put them on inquiry: *Ferguson v. Glassford*, 68 M. 36.

142. Where a mortgage is left unrecorded, and the mortgager's heirs give a second mortgage, which is put on record, an assignee of the second mortgage, who takes it in good faith for a full consideration actually paid, and without any notice, actual or constructive, that any claim exists against the premises, and whose assignment has also been recorded, is protected and given precedence by H. S. § 5683: *Burns v. Berry*, 43 M. 176.

143. Purchasers in good faith, etc., under a deed recorded before an earlier mortgage are protected: *Shelden v. Warner*, 45 M. 633.

144. A *bona fide* purchaser of the fee without notice, under a deed recorded before notice of a builder's prior lien is filed, is protected against such lien as he would be against a mortgage not recorded until after his record: *Sisson v. Holcomb*, 58 M. 634.

145. A subsequent *bona fide* purchaser whose deed is recorded is protected against a claim of dower that depends solely on a prior unrecorded deed to claimant's husband: *Wheeler v. Smith*, 55 M. 355.

146. A *bona fide* purchaser of land without notice is protected against a prior unrecorded sale of the timber the same as against any other unrecorded instrument: *Russell v. Myers*, 32 M. 522.

147. An attachment was levied in October, 1840, and sale thereunder was made in February, 1842, the deed not being recorded until 1863; held, that a *bona fide* purchaser whose deed was recorded in 1843 was protected: *Millar v. Babcock*, 25 M. 187.

148. Though he himself has notice, the grantee, immediate or mediate, of a *bona fide* purchaser for a valuable consideration, is protected against an unrecorded instrument that would not have bound such purchaser: *Godfroy v. Disbrow*, W. 260; *Shotwell v. Harrison*, 22 M. 410.

(b) *Purchasers for valuable consideration.*

149. As against a prior unrecorded deed a purchase in good faith and for a valuable consideration are necessary to give a later unrecorded one priority, and these are in their

nature distinct questions: *Shotwell v. Harrison*, 22 M. 410.

150. To constitute a *bona fide* purchaser one must have paid the purchase money before notice: *Thomas v. Stone*, W. 117; *Dixon v. Hill*, 5 M. 404; *Warner v. Whittaker*, 6 M. 183; *Blanchard v. Tyler*, 12 M. 339; *Stone v. Welling*, 14 M. 514; *Palmer v. Williams*, 24 M. 328.

See CHATTEL MORTGAGES, § 85.

151. If a part has been paid before notice and part remains unpaid, the purchaser is protected in what he has paid but not in subsequent payments: *Thomas v. Stone*, W. 117; *Kohl v. Lynn*, 34 M. 380.

152. In equity a *bona fide* purchaser is protected to the extent of the payments actually made, and no further, even when future payments are provided for, unless those are secured in such a manner that the purchaser cannot be relieved against them: *Dixon v. Hill*, 5 M. 404.

153. A contract purchaser without a deed is protected by his good faith only so far as he has made payments, if meanwhile he has notice of litigation involving the validity of his vendor's title: *Dickinson v. Wright*, 56 M. 42.

154. One who claims as a *bona fide* purchaser, but who has only given his notes, must also show that he had made payment thereon before notice of the defect in his grantor's title: *Matson v. Melchor*, 42 M. 477.

155. On dismissal of a foreclosure bill as against a subsequent *bona fide* purchaser who has not made full payment, he may still be held for such sums as remain due after he has been notified of complainant's equities: *Sheldon v. Holmes*, 58 M. 188.

156. One who buys securities that are not delivered to him, and only makes a nominal payment until after receiving notice of another's interest in them, is not entitled to protection as a *bona fide* purchaser: *Haescig v. Brown*, 34 M. 503.

157. Where land is purchased on which there is an unrecorded mortgage, of which the purchaser had no notice, but of which he is notified before a mortgage given by him for purchase money is paid, any payment made by him on his own mortgage after such notice is made in his own wrong, and he is not protected, as to such payment, against the unrecorded mortgage: *Warner v. Whittaker*, 6 M. 183.

158. Where defendant gave his note, not negotiable, for land of which complainant held a prior unrecorded deed, but was fully informed of complainant's equities before making payment of the note, it was held that

he could not claim the protection of a *bona fide* purchaser: *Blanchard v. Tyler*, 12 M. 339.

159. One who takes a deed of land in absolute payment of a debt due him, or who discharges and pays a note for the maker, whereof he is surety, as the consideration for such deed, is a purchaser for value: *Hanold v. Kays*, 64 M. 489. (This case cites *Baker v. Pierson*, 5 M. 456, as holding that one who takes a mortgage given for a precedent debt is a purchaser for value.)

160. A mere executory agreement to surrender to the grantor indebtedness owing by him to the grantee and others is not, while remaining wholly unexecuted, such a valuable consideration as to make the grantee a *bona fide* purchaser as against a prior mortgage not recorded when the deed was given: *Stone v. Welling*, 14 M. 514.

161. Where, as security simply for a precedent debt, a conveyance of premises upon which stands a mortgage, valid between the original parties, is given to one who has been led to believe the mortgage satisfied, it does not place the grantee, who has relinquished no remedy and lost no advantage by taking such conveyance, in the position of a *bona fide* purchaser for value, or clothe him with equities superior to those of such mortgagee, even though he acted in good faith and without notice: *Boxheimer v. Gunn*, 24 M. 372.

162. It seems that where the consideration is merely a past indebtedness the purchaser is not entitled to be regarded as a *bona fide* purchaser: *Battershall v. Stephens*, 34 M. 68, 74.

163. Where a chattel mortgage taken merely as security for a pre-existing debt was filed shortly before the filing of another mortgage given on the same property four days earlier, the mortgage first dated was given priority: *People's Savings Bank v. Bates*, 120 U. S. 556.

164. To constitute one a purchaser for value he need not pay all that the land is worth: *Boydson v. Goodrich*, 49 M. 65.

165. And where a son claimed protection as a *bona fide* purchaser from his father against the reinstatement of a mortgage inadvertently discharged, the fact that he paid only three-fifths of the value of the land did not defeat his claim: *Sheldon v. Holmes*, 58 M. 188.

166. The burden of proof is on the defendant, who claims title by virtue of priority of record, against a prior but unrecorded deed, to show affirmatively the payment of a valuable consideration, and that by some other evidence than the mere recital of it in the deed: *Shotwell v. Harrison*, 22 M. 410.

167. A previous unrecorded conveyance is valid as against a subsequent purchaser from the same grantor, unless he shows payment of the purchase price; the mere institution of a suit to quiet title does not make him a *bona fide* purchaser: *Smith v. Williams*, 44 M. 240.

(c) *Purchasers in good faith.*

As to what notice is afforded by record, see *supra*, III, (b).

As to notice generally, see NOTICE, I.

As to notice imparted by possession, see NOTICE, §§ 49-78.

As to notice imparted by recitals in deeds, etc., see NOTICE, §§ 74-84.

168. A subsequent purchaser whose deed is first recorded is presumed to be a *bona fide* purchaser without notice until the contrary appears: *Godfroy v. Disbrow*, W. 260.

169. A subsequent purchaser's "good faith," in the meaning of H. S. § 5683, is not required to be shown by him otherwise than by proof of the record, upon which he had a right to rely if he had no notice of the prior deed aside from the record: *Shotwell v. Harrison*, 22 M. 410.

170. And if he had such notice it must be shown by the party claiming under the prior recorded deed: *Ibid.*

171. The burden of proving notice, either actual or constructive, of a prior unrecorded deed is on the party claiming thereunder: *Larzelere v. Starkweather*, 88 M. 96.

172. One who seeks, as against a subsequent purchaser, to have a mistake in the description of the land in his unrecorded mortgage corrected, must show that the purchaser had notice of the mortgage when he bought: *Hanold v. Kays*, 64 M. 439.

173. The same principle applies in favor of an execution purchaser who records his certificate of sale in advance of previous conveyances from the debtor to third persons: *Atwood v. Bearss*, 45 M. 469.

174. Good faith is not less important than the payment of value in determining whether one is a *bona fide* purchaser; and it is not to be determined alone upon the party's testimony that he acted in good faith: *Oliver v. Sanborn*, 60 M. 846.

175. And whether one is a purchaser in good faith does not necessarily involve any question as to his integrity or the morality of his conduct in procuring a conveyance: *Battershall v. Stephens*, 84 M. 68.

176. The question of good faith is one to be determined from all the circumstances: *Miller v. Clark*, 56 M. 387.

177. Under our statutes the mere fact that the deed set up against the unrecorded conveyance is a quitclaim does not show that the grantee therein is not a purchaser in good faith. (The supreme court of the United States holds that one who takes by quitclaim is not a *bona fide* purchaser: See NOTICE, § 111): *Battershall v. Stephens*, 84 M. 68.

178. But a purely speculative purchase by quitclaim, where neither party supposed that a good title was being dealt with, and where the consideration was an indefinite sum, depending upon the grantee's outlays in securing a perfect title, did not constitute a *bona fide* purchase for value: *Ibid.*

179. If one buys a speculative title, knowing or having notice of an outstanding one, he is not a purchaser in good faith: *Miller v. Clark*, 56 M. 387.

180. Whether an unrecorded deed is void as against a subsequent recorded one that is a mere quitclaim of such interest as remains in the grantor, and that follows mesne conveyances to persons who were affected by notice of the first grantee's rights, *quere*; the court being equally divided: *De Veaux v. Fosbender*, 57 M. 579.

181. One who purchases lands omitted by mistake from a notice of levy on execution filed by the sheriff with the register of deeds is a purchaser without notice, although the indorsement of the levy on the execution mentions such lands with the rest: *Campau v. Barnard*, 25 M. 381.

182. And a mere oral statement to him by the execution creditor that such premises have been levied upon, without any suggestion that a mistake had been made in such notice, would only make it his duty to search the records before purchasing; if the records show a notice of a levy on other lands, but not on those in question, he may rely on the record as correct rather than the oral statement: *Barnard v. Campau*, 29 M. 162.

183. But if a deed that has been incorrectly recorded is shown to a prospective purchaser of the land conveyed by it, or if, in this case, the sheriff had shown the execution and the levy upon the land in question thereon indorsed, whether such positive and unequivocal notice would have any effect as against the record, *quere*: *Ibid.*

184. One who has notice of a prior unrecorded deed cannot, without further inquiry, rely upon a search of the records and the fact that no such deed is found recorded; and one who purchases with such notice and upon such search is not entitled to be considered a *bona fide* purchaser: *Shotwell v. Harrison*, 30 M. 179.

185. A person who, when he buys, has knowledge of an unrecorded deed, is bound by it as much as if it were on record: *Farmers', etc. Bank v. Bronson*, 14 M. 361.

186. A person who, at the time of receiving a deed from another, knows him to have no title, or has notice of his want of title, cannot be a *bona fide* purchaser under the recording laws, whether the real owner of the title is known to him or not: *Fitzhugh v. Barnard*, 12 M. 104.

187. A purchaser who has notice that another has claims upon the property, and that certain unrecorded papers relating thereto have been executed, and still, without seeing those papers, or inquiring into the nature of such claims, sees fit to buy upon the assumption that they relate only to a mortgage of record in favor of the same person, is not entitled to protection as a *bona fide* purchaser against such claims: *Hosley v. Holmes*, 27 M. 416.

188. Priority of record will not avail one who takes a deed from heirs of a deceased person with notice of a claim under a prior unrecorded deed from his grantor's ancestor; his failure to find the prior deed in the registry would give him no legal right to suppose such claim to be unfounded: *Munroe v. Eastman*, 31 M. 283.

189. One cannot be a *bona fide* purchaser of land which his grantor informs him has been conveyed to another: *Oliver v. Sanborn*, 60 M. 346.

190. Where a mortgage had been discharged of record by mistake, an abstract of title showing such discharge did not protect a subsequent purchaser who, when he bought, was informed by the mortgager that the mortgage was still outstanding and was held by a person named: *Ferguson v. Glassford*, 68 M. 36.

191. One who advanced money without security to enable another to purchase land which he had reason to believe was sold in fraud of the rights of a former contract purchaser was held to be without any equities as a *bona fide* encumbrancer on the land to secure his loan: *Simon v. Brown*, 38 M. 552.

192. As against a grantee who seeks to have correction of mistakes in his deed, a subsequent grantee from the same person is not a *bona fide* purchaser if he knew of the mistake before he bought: *Kinyon v. Young*, 44 M. 339.

193. He is not a *bona fide* purchaser who accepts a deed of land knowing of the existence of a prior unrecorded contract of his grantor for the sale of the land, and who fails

to inquire of the vendee in such contract in regard to his claims (see NOTICE, § 106): *Hains v. Hains*, 69 M. 581.

194. And it makes no difference that the contract (which was executed prior to H. S. §§ 5709-5713) has no certificate of acknowledgment, and was not, therefore, entitled to record: *Ibid*.

195. Where a son has bought land from his father, the mere fact of the relationship does not show that he should not claim the rights of a *bona fide* purchaser against reinstatement of an inadvertently discharged mortgage given by his father to a third person: *Sheldon v. Holmes*, 58 M. 138.

196. Notice to a subsequent mortgagee of a prior unrecorded deed is not made out by proof of blind remarks and of ambiguous and misleading hints, not understood by him in such sense as to put him on inquiry: *Shepard v. Shepard*, 36 M. 178.

197. A statute (c. g., R. S. 1838, p. 260, § 25) requiring actual notice to validate an unrecorded conveyance excludes constructive notice, such as notice from possession in fact not known, or from filing attachment levy and sale thereunder: *Hubbard v. Smith*, 2 M. 207; *Millar v. Babcock*, 25 M. 187.

198. The question of a subsequent purchaser's good faith does not arise where his deed was not in fact recorded first: *Shelden v. Warner*, 45 M. 638.

199. Or where his deed is forged: *McGinn v. Tobey*, 62 M. 252. See NOTICE, §§ 113, 114.

RECOUPMENT.

1. Recoupment is equivalent to a cross-action: *Allen v. McKibbin*, 5 M. 449; *Widrig v. Taggart*, 51 M. 103.

2. It cannot, therefore, be enforced against an infant: *Widrig v. Taggart*, 51 M. 103.

3. Nor can a claim of recoupment be based upon breach of a contract void because made on Sunday: *Brazee v. Bryant*, 50 M. 136.

4. Or void because made *ultra vires* by a corporation (see CORPORATIONS, § 128): *Day v. Spiral Springs Buggy Co.*, 57 M. 146.

That the vendee in a land contract, when sued for a balance due, may show by way of recoupment that value of land was lessened through destruction of timber by fire pending suit involving validity of plaintiff's title, see VENDORS, § 146.

As to recoupment of damages and notice thereof, see DAMAGES, §§ 143, 150, 188, 502-538. See, also, CERTIORARI, § 182; COSTS, § 22; ERROR, § 816; PLEADINGS, § 831; SALES, § 165.

REFERENCE.

I. APPOINTMENT OF REFEREE; EXECUTION OF POWERS.

II. REPORT; REQUIREMENTS AND EFFECT OF.
III. PROCEEDINGS AFTER REPORT MADE.

As to references in chancery, see EQUITY, XI, (e).

I. APPOINTMENT OF REFEREE; EXECUTION OF POWERS.

1. Even on stipulation of the parties a judge cannot appoint himself referee in a cause pending in his own court: *Woodin v. Phoenix*, 41 M. 655.

2. If a reference is improperly made the remedy seems to be by *mandamus* to set it aside, not by *certiorari*: *Ibid*.

3. Where a cause is referred, by consent, to a particular person, the court cannot appoint a new referee except by consent: *Smith v. Warner*, 14 M. 152.

4. H. S. § 7378, providing that a case in the circuit court cannot be referred without the consent of the parties, if within ten days after joining issue either has filed with the clerk a demand for jury trial, does not apply where issue was joined in justice's court, and on appeal the demand was filed under rule 61 by the first day of the term for which the case was noticed for trial, and on or before the first call of the calendar: *Odell v. Reynolds*, 40 M. 21.

5. A reference may rest on the written consent of the parties (H. S. § 7877): *Bewick v. Fletcher*, 89 M. 25.

6. A stipulation for a reference is not operative after judgment, and does not return a case, on reversal, to the referee. The case is simply remitted to the court: *Hopkins v. Sanford*, 41 M. 248.

7. The omission to enter an order of reference is cured by the statute of amendments (H. S. §§ 7634-7636): *Bewick v. Fletcher*, 89 M. 25.

8. A referee is not a judge, and does not act judicially in the strict sense of the term: *Underwood v. McDuffee*, 15 M. 361; *People v. Wayne Circuit Judge*, 18 M. 483.

9. Referees need not be sworn: *Underwood v. McDuffee*, 15 M. 361.

10. If the referee declines to proceed, relief must be asked in the circuit court to have the cause expedited: *Abbott v. Mathews*, 26 M. 176.

11. A referee can adjourn the proceedings on the reference as convenience requires, so long as the adjournments are consistent with

law and practice: *Campau v. Brown*, 48 M. 145.

12. A reference must be conducted like a trial by a court, and contemplates the introduction of testimony with rulings and findings of fact and law subject to revision for errors; and it will not sustain judgment unless it conforms to the statute: *Gibson v. Burrows*, 41 M. 718.

13. If plaintiff fails to appear before the referee he will be nonsuited: *Abbott v. Mathews*, 26 M. 176.

14. The allowance of leading questions by a referee is not assignable as error, but in extreme cases may warrant an appeal to the discretion of the circuit court to avoid the decision: *Campau v. Brown*, 48 M. 145.

15. The referee must find the facts and the law separately: *Smith v. Warner*, 14 M. 152.

16. But classing a conclusion as to intent as one of law is a mere irregularity: *Ferris v. Quimby*, 41 M. 202.

17. The fact that references are not compulsory does not prevent them from being considered as a mode of trial authorized by law, and not to be treated with disfavor: *People v. Wayne Circuit Judge*, 18 M. 483.

II. REPORT; REQUIREMENTS AND EFFECT OF.

18. A stipulation to refer contained a direction to the referee to report within a certain time. He did not report until much later. Held, that a party by opposing a motion to set aside this report waived any objection for delay: *Bewick v. Fletcher*, 89 M. 25.

19. After a referee had closed the proofs, made his accounting and drafted his report, he was held not disqualified from completing it by stating what he thought the result would be in the circuit court: *Heath v. Waters*, 40 M. 457.

20. A referee is bound to decide according to the weight of evidence: *Danaher v. Ward's Estate*, 40 M. 800.

21. But by electing to refer, the party loses his right to complain that the referee's finding is against the weight of evidence: *People v. Wayne Circuit Judge*, 18 M. 483.

22. A finding of facts is not merely a narration of evidence, but must determine what is proved: *Downey v. Andrus*, 43 M. 65.

23. A referee is not required to supplement his general finding by answers to specific questions dictated by counsel: *Odd Fellows v. Morrison*, 42 M. 521.

24. A finding that defendant purchased a bakery is specific enough to include the oven

and oven fixtures, and authorize a finding of the value of the fixtures: *Neib v. Hinderer*, 42 M. 451.

25. In finding the cost price of a stock of groceries, a referee may find the quantity and price of the different articles by name, even though he does not expressly find that each article enumerated constitutes a part of the stock; and though the testimony cannot be resorted to in aid of the finding, if it appears on inspection that the articles named are usually classed as groceries, the finding may be sustained, and it cannot be assumed that the referee included articles not within the contract of purchase: *Ibid*.

26. A referee, after finding that defendant had agreed to pay the cost price of certain articles, found what their "value" was according to a certain exhibit not set forth in the record. Held, that all reasonable intendments must be made in support of the finding and judgment, and that in the absence of a demand for a more specific finding it might be properly assumed that he used the word "value" to signify "cost price:" *Ibid*.

27. The statement in a referee's report, "I do not find" that plaintiff knew certain facts, is not equivalent to a direct finding that plaintiff did not know the facts mentioned; and it is defective: *Mason Lumber Co. v. Buchtel*, 101 U. S. 633.

28. A referee's statement of his conclusion as to what sums he should allow is not a finding of facts and will not sustain a judgment; there should also be such a statement as would show they were legitimate: *Weirich v. Cook*, 39 M. 134.

29. If the report is so defective that the court cannot ascertain the merits of the case no judgment should be rendered upon it: *Carroll v. Grand Trunk R. Co.*, 19 M. 94.

30. Where, in an action to recover damages for the breach of a building contract, a referee's report finds as facts that a contract was made which was abandoned and broken, and that damages resulted, the conclusion of liability for an amount stated is not open to the general objection that it is inconsistent with the findings of fact, in the absence of any exception to any of the items found: *Bevier v. Wright*, 30 M. 484.

31. The statement in the report of a referee that he cannot find upon certain suggested questions of fact is not subject to exception where it does not appear that a finding on such questions was essential, or that there was evidence before the referee on which such a finding was practicable: *Cook v. Stevenson*, 30 M. 242.

32. Objections to the proceedings before a referee, on matters of practice, must be taken by exception as in trials at the circuit. And after his report is filed all exceptions not taken before him must be confined to his conclusions of law, his finding of facts being then conclusive: *Abbott v. Mathews*, 26 M. 176.

33. Where the report of a referee is not excepted to, it will stand as the finding or determination of the court for the purpose of enabling the party in whose favor it is made to take judgment upon it as of course: *Amboy, L. & T. B. R. Co. v. Byerly*, 18 M. 439.

34. The finding of a referee, upon which judgment has been rendered, constitutes, like the verdict of a jury, an essential part of the record of a case, and is conclusive as to the facts found in all subsequent controversies between the parties on the same contract: *Mason Lumber Co. v. Buchtel*, 101 U. S. 633.

III. PROCEEDINGS AFTER REPORT MADE.

35. Where, under H. S. § 7386, a cause is referred by the circuit court to auditors, the account stated and reported by the auditors, and nothing else, is made evidence for either party who may see fit to use it on the trial. If neither party uses it it is not evidence in the cause. Deposition taken by the auditors and returned into court with their report, but not attached to the report or forming any part of it, cannot be used as evidence on the trial: *Beard v. Spalding*, 12 M. 309.

36. The setting aside of a reference upon cause shown is such interlocutory action as is within the legitimate discretion of the circuit judge, and will not be reviewed on *mandamus*: *Taylor v. Osceola Circuit Judge*, 30 M. 99.

37. The circuit court, after report of a referee has been filed in court, cannot, on his application, refer the case back to enable him to review his conclusions upon the facts: *Smith v. Warner*, 14 M. 152.

38. It is only when exceptions have been taken that the cause can be referred back. Such reference back takes the whole case before the referee for consideration. Separate portions of the report cannot be referred back by themselves: *Ibid*.

39. But the court can, on motion, recommit a report to a referee for the correction of an error: *Bewick v. Fletcher*, 39 M. 25.

40. Where an omission in the report is complained of, the remedy is by seeking a further finding, not by excepting to the report: *Mason v. Fractional School District*, 34 M. 228.

41. The court may properly send back a referee's report to be completed, even if it has not been excepted to, where all that is needed is to correct a mere inadvertent omission that can be supplied from the exhibits attached to the report: *Bryant v. Hendee*, 40 M. 548.

42. A motion to send back for amendment a bill of exceptions in a case pending on a referee's report was properly denied where no defects were pointed out: *Cool v. Snover*, 88 M. 562.

43. Formal defects in a referee's report should be called to the attention of the trial court; they cannot be considered for the first time in the supreme court: *Mason Lumber Co. v. Buchtel*, 101 U. S. 638.

44. On writ of error to review the confirmation of the report the supreme court has no power to have such report made more full and perfect: *Campau v. Brown*, 48 M. 145.

45. Whether a special reference should be rescinded entirely upon setting aside the report of the referee, *quere*: *Smith v. Warner*, 14 M. 152.

46. There can be no new trial on the ground that the report is against the weight of evidence: *People v. Wayne Circuit Judge*, 18 M. 488.

47. When the report is wholly set aside the cause stands in the same condition as if it had never been tried, and no judgment can be rendered until a new trial is had: *Rice v. Benedict*, 18 M. 75.

48. Where, in a case that was tried before a referee, judgment is reversed and a new trial ordered by the supreme court, the case does not go again before the referee, but stands for trial in the usual manner in the court below: *Hopkins v. Sanford*, 41 M. 248.

49. A party who excepts to the conclusions of law in a report of a referee, and makes no complaint of irregularities in the reference proceeding, waives all objections to such irregularities: *Abbott v. Mathews*, 26 M. 176.

50. The supreme court will not go back of the finding of a referee to infer or imagine illegalities undisclosed thereby. Where a report found that a public improvement had been ordered and contracted for by a common council, the objection that it had not been shown that the city contracted duly and with all legal requisites was not considered: *Bissell v. Collins*, 28 M. 277.

51. A bill of exceptions settled before a referee performs the same office for the purposes of a writ of error as a bill settled upon a trial before the circuit judge: *Altman v. Wheeler*, 18 M. 240.

As to review in supreme court of reference

cases, and as to when findings are conclusive, see ERROR, §§ 20, 160, 184, 298, 300, 350-357, 417, 431-438, 674, 716.

REGISTER OF DEEDS.

1. When an equal division of votes for the office of register of deeds appears, and lots are drawn as provided by H. S. § 188, the losing party is not precluded from contesting the validity of the election: *Keeler v. Robertson*, 27 M. 116.

2. As the common-law right to inspect public records and to make copies or abstracts thereof is confined to those who have some interest therein, and as H. S. § 5721, to "facilitate the inspection of the records and files in the offices of the registers of deeds," does not extend the right to other persons, the register is not compelled to permit copying, etc., by parties who are compiling a set of abstract books for selling abstracts of title: *Webber v. Townley*, 43 M. 534.

3. A foreign corporation claiming to have and to be constantly purchasing large interests in lands in a certain county, and to need a complete system of abstracts for the sake of protecting its rights, was denied a *mandamus* to compel the register to allow it to copy the records, where it showed no charter power to deal in land titles: *Diamond Match Co. v. Powers*, 51 M. 145.

4. Where a register of deeds who has received a conveyance not officially, but as a private person to hold it in escrow, is forbidden by the grantor to record it, the grantee cannot have a *mandamus* to compel him to do so: *Austin v. Register of Deeds*, 41 M. 723.

5. Act 262 of 1887 is entitled "An act to provide for reporting all mortgages by the several registers of deeds of the state to the supervisors and assessing officers of their respective counties, and to the registers of deeds of other counties wherein the mortgagee resides, for assessment purposes, and providing blank form-books therefor; also prescribing the duties of registers of deeds relative to the recording of mortgages." Sec. 12 provides that no mortgage shall be recorded that does not give the mortgagee's name and residence. *Held*, that the act does not embrace more than one object, and that the title expresses the object: *People v. Sanilac Supervisors*, 71 M. 16.

As to the register's duties in recording, see RECORDING ACTS, II.

6. Having agreed to furnish an intending purchaser with a full abstract of title the reg-

ister is liable for the damages caused by his negligent omission to mention an encumbrance: *Smith v. Holmes*, 54 M. 104.

As to evidence in action for such negligence, see EVIDENCE, §§ 375, 497.

Receipt by, of redemption money, see MORTGAGES, §§ 989-991.

RELIGIOUS SOCIETIES.

Sunday subscriptions for benefit of unincorporated church held valid, see CONTRACTS, §§ 187, 241.

1. Under R. S. 1846, ch. 52 (repealed and supplanted by act of Feb. 13, 1855, H. S. ch. 170), a Roman Catholic congregation could not be incorporated through lay trustees, as such incorporation would give the corporators power that the laws and usages of the church vest elsewhere, and would thus cut off the local congregation from the communion of the church at large—a result that the legislature could not have contemplated: *Smith v. Bonhoof*, 2 M. 115.

2. Said statute was permissive, not mandatory, as to incorporation by trustees, and under § 23 thereof the person or persons in whom such power was vested by the church laws might become incorporated: *Ibid.*

3. The incorporation of a religious society or church is not sufficiently shown by the fact of holding the ordinary meetings of religious societies and electing officers; such acts may be performed as well by unincorporated associations: *Fredenburg v. Lyon Lake M. E. Church*, 37 M. 476. Nor is the election of trustees to receive and hold property enough, of itself, to constitute an act of incorporation: *Allen v. Duffie*, 43 M. 1.

4. Supporting meetings, contracting debts *suo nomine*, receiving and expelling members, and being represented in annual conventions or conferences, do not constitute the exercising of corporate franchises and privileges so as to entitle a religious society to the presumption, after ten years (H. S. § 4649), of a legal incorporation: *Newark Methodist Church v. Clark*, 41 M. 730.

5. A religious society that in good faith has exercised corporate powers for ten years must be treated as a legal incorporation, even though the proceedings taken to incorporate it were in themselves fatally defective: *Ionia Congregational Church v. Webber*, 54 M. 571.

6. Though a religious society be a corporation by virtue merely of a ten-years' use of corporate franchises (H. S. § 4649), it has the title to all property conveyed to trustees for its use; and it cannot be displaced by a new

incorporation unless all the members practically acquiesce: *Dearborn Lutheran Church v. Rechlin*, 49 M. 515.

7. Suit upon a subscription was brought in the name of several persons designated as trustees of a certain church. There was no averment or recital of incorporation. Held that, as it must be presumed, in such case, that no incorporation exists or is relied upon, the absence of proof of corporate existence was not fatal; and that the want of proof to show that plaintiffs were trustees in fact was not available if raised for the first time on error: *Allen v. Duffie*, 43 M. 1.

8. The trustees, and not the church or society, constitute the corporation: *Walrath v. Campbell*, 28 M. 111.

9. The church and corporation are distinct, and the latter cannot be held in damages for an expulsion by and from the former: *Hardin v. Baptist Church*, 51 M. 187.

10. A church or religious society having no property will not be compelled by *mandamus* to restore a member irregularly expelled, where it appears that he had acted in hostility to the association and that his restoration would be destructive to its interests: *Meister v. Anshei Chessed Congregation*, 37 M. 542.

11. The office of deacon is ecclesiastical, not statutory, and is controlled by the unincorporated membership of a religious association, the decision of whose tribunals upon the election thereto is final. And the fact that the deacons are authorized by statute to be *ex officio* trustees of the church on its civil incorporation makes no difference: *Attorney-General v. Geerlings*, 55 M. 562.

As to testing right to church offices, see QUO WARRANTO, §§ 24, 30-32.

12. The official character of church trustees may be proved by parol in collateral proceedings: *Druse v. Wheeler*, 22 M. 439; *Walrath v. Campbell*, 28 M. 111.

13. It must be presumed that when the trustees of a church, constituting the elective body, choose another trustee, they determine that he is in fact eligible; and his official authority cannot be questioned indirectly: *Cicotte v. Ancieur*, 53 M. 227.

14. Where there is no incorporation, property must be held for the church by trustees. A certificate from the preacher in charge of a Methodist church society, drawn in accordance with the discipline of the church and appointing certain named persons trustees of the society, was held sufficient to constitute them trustees to hold society property: *Newark Methodist Church v. Clark*, 41 M. 730.

15. Under H. S. § 4624, and the statute of

uses, H. S. § 5565, the title to lands held in trust for a religious society at the time it is incorporated passes at once to the corporation: *Ibid.*

16. The right of occupancy and possession given by the statute to incorporated trustees is applicable solely to cases where the property is granted or devised directly to the church or congregation, or to another person in simple trust for the use of such church or congregation, and does not apply to property conveyed to a trustee of the grantor's own appointment in special trust (so held under R. S. 1846, ch. 52); nor could a court, under ch. 52, § 18, R. S. 1846, authorize a sale of property so conveyed. And under a special deed of trust, and in view of the laws and usages of the Roman Catholic church, it was held that the right to rent pews belonged to the parish priest and not to the trustees elected under said statute: *Smith v. Bonhoof*, 2 M. 115.

17. The trustees have the power to mortgage the personal property of the church or religious society without any direction or vote for that purpose. H. S. § 4625 applies only to mortgages of real estate: *Walrath v. Campbell*, 28 M. 111.

18. Under H. S. § 4625 the notice of the meeting of the trustees of a religious society to mortgage the real estate of the society must, as must the action taken, or any vote or direction given at the meeting, be proved by the written notice itself and the record of the meeting, and not by parol: *Ibid.*

19. Where it was claimed that a mortgage on church property had been given in consideration of the mortgagee's services as pastor, but there was no evidence that his salary had been fixed as required by H. S. § 4634, or that he had been regularly hired by the church, and no evidence of the value of his services, if any, it was held that no consideration for the mortgage was shown. And as the mortgagee had sworn that the mortgage was made with the express design of hindering another person from collecting a debt by execution against the society, it was held that the giving of the mortgage must be held a fraud against such person, until shown to be otherwise by proof of such consideration: *Ibid.*

20. The execution of a mortgage upon the property of the First Orthodox Congregational Society of Middleville, in the name of "the Trustees of the Orthodox Congregational Church of Middleville," is not such a misnomer as to invalidate the mortgage, where the identity of the society intended is clearly proved: *Ibid.*

21. H. S. § 4625 gives church trustees "authority, under the direction of the society, to sell and convey, mortgage or lease any real estate belonging to such society," providing "no such sale or conveyance" shall be made unless the assent of two-thirds of those present at any meeting specially called for the purpose should be obtained. Held, that this does not require a two-thirds vote as a condition to a mortgage: *Scott v. Jackson Methodist Church*, 50 M. 528.

22. H. S. § 4628 provides that any two of the trustees of a religious society may lawfully call a meeting of the trustees, a majority of whom, when lawfully convened, can do anything which the trustees are authorized to do. Held, that when two out of three trustees have come together without notice to any one else, and unite in executing a mortgage on the church property, they are lawfully convened for that purpose: *Ibid.*

23. A religious society's ratification of an act of its trustees need not be by a direct proceeding with an express intent to ratify, but may be effected indirectly and by acts of recognition or acquiescence, or acts inconsistent with repudiation or disapproval; as, by taking advantage of the act, permitting action to be taken on it without objection, or making payments in pursuance of it: *Ibid.*

24. A religious society that has power to direct its trustees to take action, and can assent thereto by a majority of its members, can ratify action which the trustees have taken without any preliminary direction or assent, and if no rights have intervened such ratification relates to the date of the act: *Ibid.*

25. Proof that the action of the trustees of a religious society in giving a mortgage has been ratified by the society is admissible under a foreclosure bill alleging that the society gave the mortgage: *Ibid.*

26. The corporation of Ste. Anne's Church, Detroit, held to have power to transfer by quitclaim certain land granted by the governor and judges: *Cicotte v. Anciaux*, 53 M. 227.

27. And it seems that a trustee of the church who had previously joined with the other trustees in getting leave from the courts to sell such property could not object to a sale on the ground that the corporation had no right to sell: *Ibid.*

28. H. S. § 8152, authorizing a court of equity to intervene at the instance of a single trustee in corporate matters, does not apply to religious corporations, but is chiefly designed to protect business corporations having stockholders with pecuniary interests involved: *Ibid.*

29. H. S. § 4661 forbids Episcopal churches to acquire title to land until their articles of organization are recorded. But the grantees of certain land deeded it as a church site for use of a congregation that did not organize until several years afterwards. After it was organized, however, the rector, who knew the facts, took from the successors of these persons, who were then the vestry of the church, a deed to a part of the land in satisfaction of a claim he had for unpaid salary. *Held*, that he was thereby estopped from afterwards suing the church for the amount unpaid, and the members of the vestry who had given the deed were also estopped from claiming that the amount had not been paid: *Skinner v. Grace Church*, 54 M. 543.

30. Where a trustee performs services for his church from kindly motives and with charitable intentions the law does not imply a promise to pay for them even though they are outside of his services as trustee: *Cicotte v. St. Anne's Church*, 60 M. 552.

31. It was error to allow a claim for services as sexton to one who at the time was a vestryman, and some of the time a senior warden and treasurer of the society, where the evidence clearly showed that the performance of the duty was voluntary and without expectation of recompense: *St. Jude's Church v. Van Denberg*, 81 M. 287.

32. An attorney at law who is trustee of a church may be employed specially or impliedly by his co-trustees to render professional services in regard to the church property, and may recover compensation therefor: *Cicotte v. St. Anne's Church*, 60 M. 552.

33. A bishop is not liable for the salary of a priest whom he has engaged; they are fellow-servants of the church, for which the bishop acts merely as a superior agent, and not as a principal: *Rose v. Vertin*, 46 M. 457.

34. Where a note reading "we promise to pay," etc., and not purporting to bind the corporation, is signed by individual names, to each of which is appended the words "vestryman, Grace church," it is the note not of the church or corporation but of the signers: *Tilden v. Barnard*, 43 M. 376.

35. Payment of church debts by a trustee was *held* to have been by way of gift and not to preclude foreclosure in behalf of the church of a mortgage against such trustee, though it had been given as additional security to a previous mortgage upon the church property: *Carpenter v. Buttrick*, 41 M. 706.

As to bequests to religious societies, see *WILLS*, §§ 50, 183, 298-297.

REPLEVIN.

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I. JURISDICTION.

1. In an action of replevin brought in the circuit court the declaration alleged the value of the property to be \$100, and claimed damages for detention to a still larger amount. Plaintiff had recently bought the property at a price exceeding \$100, and defendant had taken it from his possession without his consent. The appraisal placed the value at \$90. *Held*, that the court had jurisdiction: *Eldred v. Woolaver*, 46 M. 241.

2. Replevin being brought in the circuit court the property was seized under the writ and was delivered to plaintiff. It was appraised at \$225, and the declaration alleged it to be worth \$500. On the trial some testimony was given by which it appeared doubtful whether the value exceeded \$100. *Held*, that the jurisdiction of the court depended on the amount claimed in the declaration, and that there was no authority, either in court or jury, to assess the value where the property has been delivered to plaintiff and he recovers a verdict for it: *Merrill v. Butler*, 18 M. 294.

8. After jurisdiction in replevin has attached the value of the property is not in issue except for the purposes of an assessment of value in defendant's favor: *Eldred v. Woolaver*, 46 M. 241.

4. While the circuit court may have jurisdiction, under the general replevin act (see H. S. § 8324), of replevin where the value of the property is clearly less than \$100, it should not and probably was not intended to have it, and such actions should be brought in a justice's court: *Kittridge v. Miller*, 45 M. 478.

5. Where the affidavit and declaration in replevin brought in justice's court stated value below \$100, judgment went for plaintiff, who, testifying on appeal taken by defendant, swore that the value was over \$150. Defendant moved to quash the writ and for dismissal. The court held the motion under advisement and directed the case to proceed. Defendant then introduced testimony tending to show value less than \$100. *Held*, that it was proper to deny the motion and to render judgment for plaintiff on a finding that the property was worth less than \$100: *Dinnen v. Baxter*, 18 M. 457.

6. A justice's jurisdiction in replevin is limited to cases where the value of the property does not exceed \$100; and the value as stated in the affidavit is presumptively the real value until otherwise shown in subsequent proceedings: *Carew v. Matthews*, 41 M. 576.

7. An affidavit for replevin does not give a justice jurisdiction if it does not state that the value of the property sought does not exceed \$100; and the defect, unless waived, is fatal, if objection is seasonably taken: *Sager v. Shutts*, 53 M. 116.

8. It seems that the question of a justice's jurisdiction, as depending on value, is closed by the affidavit for the writ: *Henderson v. Desborough*, 28 M. 170.

9. Where the affidavit, writ and declaration set forth the value of the property as not exceeding \$100, and defendant pleads the general issue, the fact that plaintiff's testimony on the trial shows the value to be greater does not oust the justice's jurisdiction: *Ibid*.

10. A defendant who prevails in replevin before a justice may recover the value of the property replevied, not exceeding \$500, which is the constitutional limit of the jurisdiction of justices: *Ibid.*; *Humphrey v. Bayn*, 45 M. 565; *Chilson v. Jennison*, 60 M. 235.

11. Under R. S. 1848 justices had no jurisdiction of actions of replevin: *People v. Jackson Circuit Judges*, 1 D. 302.

12. A justice has jurisdiction of an action

of replevin against an administrator: *Singer Manuf. Co. v. Benjamin*, 55 M. 330.

13. Justices of the peace have jurisdiction of the statutory action of replevin for beasts distrained, etc.: *Pistorius v. Swarthout*, 67 M. 186.

As to when replevin may be brought in state court against a federal marshal, see COURTS, §§ 152-155.

II. NATURE OF THE ACTION.

14. The object of our statutory replevin is to determine the right of possession at the commencement of the action as well as title to the property for temporary or permanent purposes connected with that possession: *Belden v. Laing*, 8 M. 500.

15. The primary object of our action of replevin is to enable plaintiff to obtain the actual possession of property wrongfully detained from him by defendant at the time the action is brought: *Hickey v. Hinsdale*, 12 M. 99; *Clark v. West*, 23 M. 242.

16. Replevin with us is a possessory action: *Hickey v. Hinsdale*, 12 M. 99; *Hatch v. Fowler*, 28 M. 205; *Bacon v. Davis*, 30 M. 157; *Hunt v. Strew*, 33 M. 85; *Henry v. Ferguson*, 55 M. 399; *Adrian v. Rutherford*, 57 M. 170; *Pearl v. Garlock*, 61 M. 419.

17. The action is not in the nature of a bill *quia timet*; its purpose is not to quiet title to property in plaintiff's possession: *Hickey v. Hinsdale*, 12 M. 99; *Bacon v. Davis*, 30 M. 157.

18. The form of the action under our statute is always in the *detinet*: *Le Roy v. East Saginaw C. R. Co.*, 18 M. 233.

19. Replevin rests on a tortious taking or detention: *Cadwell v. Pray*, 41 M. 307.

20. An unlawful detention at the time of the institution of the suit is the gist of this action: *Hickey v. Hinsdale*, 12 M. 99; *Sexton v. McDowd*, 38 M. 148; *Gildas v. Crosby*, 61 M. 413.

III. WHEN THE PROPER REMEDY.

21. Replevin, not attachment, is the proper process to obtain possession of goods claimed by plaintiff as his property: *Mendelsohn v. Smith*, 27 M. 2.

22. Replevin is the only remedy to get personal property specifically: *Corbitt v. Brong*, 44 M. 150.

23. Not replevin, but trespass for the original value, is the proper remedy where plaintiff's trees have been cut down by an unintentional trespasser and converted into hoops of

vastly greater value: *Wetherbee v. Green*, 22 M. 311.

24. Replevin is not the proper remedy for obtaining possession of papers filed in a public office. The custody of such papers belongs to the officer in charge, and it would violate public policy to allow a sheriff or constable, under color of legal process, to intermeddle with public files: *La Grange v. State Treasurer*, 24 M. 468.

25. Where the property sought to be recovered has been destroyed before demand made or suit brought, replevin is not the proper remedy: *Gildas v. Crosby*, 61 M. 413.

26. Replevin for the distrained beasts is the proper remedy to test the validity of a distrainer's proceedings: *Hamlin v. Mack*, 33 M. 103; *Norton v. Rokey*, 46 M. 460.

27. The special writ of replevin given by H. S. §§ 8372-8376 to one whose beasts are distrained or impounded negatives the general remedy by replevin: *Johnson v. Wing*, 8 M. 163; *Campau v. Konan*, 39 M. 362; *Marx v. Woodruff*, 50 M. 361; *Marx v. Labadie*, 51 M. 605.

28. But the general action of replevin is not defeated by a mere unfounded claim that animals have in good faith been distrained *damage feasant*: *Campau v. Konan*, 39 M. 362.

29. Under H. S. §§ 8372, allowing the owner of "beasts impounded in order to recover a penalty" to bring replevin for them, that action lies where plaintiff's beasts are held for the sums allowed by H. S. § 8356 per head for cattle distrained: *Marx v. Labadie*, 51 M. 605.

IV. WHEN MAINTAINABLE.

That replevin is not abated by assignment for creditors, see ASSIGNMENT, § 168.

As to replevin for express package of money sent to agent and levied on by creditor of principal, see PAYMENT, § 77.

(a) *Conditions precedent.*

30. One to whom goods have been assigned by way of security, but who has allowed them to remain in possession of the assignor, is not obliged to demand them before bringing replevin against an officer who has seized them under an execution against the assignor: *Jackson v. Dean*, 1 D. 519. 1

31. Where the taking by defendant was wrongful no demand is necessary before bringing replevin: *Le Roy v. East Saginaw C. R. Co.*, 18 M. 233; *Bertwhistle v. Goodrich*, 58 M. 457.

32. Where one's property is disposed of without authority by the party having it in charge,

the owner may bring replevin therefor without a previous demand, notwithstanding the property is in the hands of one who bought in good faith and without notice of the title of the real owner: *Trudo v. Anderson*, 10 M. 357; *Ballou v. O'Brien*, 20 M. 304.

33. Where defendant took possession of plaintiff's cow, claiming it under a chattel mortgage given him by plaintiff's husband, no demand was necessary before bringing replevin: *Denton v. Smith*, 61 M. 431.

34. Demand before bringing replevin is unnecessary where defendant has deliberately obtained the goods by a fraudulent promise to pay for them which he did not mean to perform: *Carl v. McGonigal*, 58 M. 567.

35. Demand need not precede an action of replevin for goods the taking of which by defendant constituted a trespass, unless the trespass has been satisfied or the plaintiff is estopped from asserting it; but where the wrongful taking arises out of contract relations, and defendant holds in good faith, demand is necessary: *Adams v. Wood*, 51 M. 411.

36. Where property, sold upon condition that the vendee keep it at a certain place till fully paid for, was transferred to another city and pawned, it was held that the vendee had violated his duty as bailee and was a wrongdoer, and that the vendor might bring replevin against the pawnee without previous demand, as the pawnee's possession originated in a tortious taking: *Whitney v. McConnell*, 29 M. 12.

37. Demand is not necessary before bringing replevin against an officer whose seizure of goods is an abuse of his authority: *Vanderhorst v. Bacon*, 38 M. 669.

38. Where a mortgagee of chattels has the right to take possession of them if sold, he cannot replevy them from the mortgagor until after demand made: *Cadwell v. Pray*, 41 M. 307.

39. A husband gave a chattel mortgage upon a span of horses in use on his wife's farm and absconded. The mortgagee, without making any demand for them, replevied them for breach of condition of the mortgage. Held, that the mere presence of the horses on the farm did not make the wife a wrongdoer, and that the mortgagee was at least bound to present his claim to her to be recognized or rejected before he could lawfully subject her to the costs of a suit: *Campbell v. Quackenbush*, 33 M. 287.

40. Demand is necessary before bringing replevin for an article which defendant has borrowed from one who did not know whose it was and did not claim ownership, but who found it on his premises, where it had been

put for safety long before by another stranger to the title who found it exposed near by: *Becker v. Vandercook*, 54 M. 114.

41. Where parties agreed orally on a sale of lumber to an amount within the statute of frauds, and the vendor put it on the premises of the vendee, who refused to accept it unless upon a different inspection from that insisted on by the vendor, the vendor could not bring replevin for it until after the vendee had, on reasonable demand, refused to let him remove it; the vendor having voluntarily caused it to be put upon the premises, the vendee cannot be made a wrong-doer by simply letting it stay there: *Darling v. Tegler*, 80 M. 54.

42. Where defendant came lawfully into the possession of the goods, and there has been no wrongful detention, demand before suit must be made: *Adams v. Wood*, 51 M. 411.

43. Property sold under an agreement that title shall not pass until full payment cannot, without demand, be replevied from the vendee for non-payment of a balance due after part payment: *New Home Sewing Machine Co. v. Bothane*, 70 M. 448.

44. One who has given a bill of sale to secure a debt, which bill has been filed with the town clerk, cannot replevy the property without making demand for it or paying the debt: *Brown v. Coon*, 59 M. 596.

45. A demand for personalty need not be made upon one who has no control over it or authority to deliver or to refuse to deliver it: *Barnes v. Gardner*, 60 M. 183.

46. Where a chattel mortgage provided that the mortgagee might take possession in case the property was sold, *held*, that a demand of payment before the debt was due was not a demand for the goods, especially if made by the assignor of the debt upon the mortgager, since both had parted with their interests: *Cadwell v. Pray*, 41 M. 307.

47. Defendant being in possession of a quantity of wheat, plaintiff brought replevin for one hundred bushels, which were measured out and taken under the writ from the whole quantity. *Held* to be no objection to the maintenance of the action that plaintiff did not demand and take under the writ the whole quantity; the evidence showing the whole to have been the plaintiff's and that he did not own as tenant in common with others: *Crouse v. Derbyshire*, 10 M. 479.

48. Where demand is necessary before bringing replevin, a demand made by the officer after the issuing of the writ, and while he has it in his possession ready for service, is insufficient: *Darling v. Tegler*, 80 M. 54.

49. Replevin cannot be made to lie on a demand which, when made, was in violation of the injunction of a court of competent jurisdiction: *Smith v. Smith*, 52 M. 538.

50. Where one rescinding a trade of personal property for land sued out a writ of replevin for the personal property before tendering a deed of the land, the suit was *held* to be premature though the tender was made before the writ was served: *Wilbur v. Flood*, 16 M. 40.

51. Where an infant's chattels mortgaged by him to secure money borrowed for a business enterprise are seized by the mortgagee, the mortgager, being still under age, may replevy them without restoring the loan: *Corey v. Burton*, 32 M. 30.

52. One bringing replevin for goods which defendant claims under a bill of sale which he procured from plaintiff through deception and fraud, she being ignorant of the nature of the paper signed by her, need not first return money, not due, borrowed by her from defendant to pay off a mortgage on the goods; nor need she reconvey land which he, unknown to her, has conveyed to her in payment of his pretended purchase of goods: *Moffitt v. Shields*, 67 M. 610.

Replevin not defeated by neglect to tender reward, see LOST GOODS, § 4.

53. Replevin will not lie for property held in connection with a tenancy on shares running from year to year and terminable only by notice, so long as the year has not expired and notice has not been given: *Coan v. Mole*, 39 M. 454.

(b) *When lies.*

1. Generally.

54. A. brought replevin against B., who was a member of a firm, and C., who was its agent and in possession of the property replevied; the firm then brought replevin against A., and joined three other defendants with him, for the same property delivered to A. upon the first writ, and the only question in both suits was whether A. or the firm owned the property. *Held*, that the second suit was a cross-replevin, and could not be maintained: *Fisher v. Busch*, 64 M. 180.

55. That the parties in the second suit are not identical with those in the first is not important, unless the new parties claim some interest in the property or right thereto different from or independent of the parties to the first: *Ibid*.

56. Replevin will not lie for property in

plaintiff's possession at the time suit is begun: *Hickey v. Hinsdale*, 12 M. 99; *Aber v. Bratton*, 60 M. 357.

57. The right to maintain replevin must exist at the very moment the writ is issued: *Wattles v. Dubois*, 67 M. 313.

58. One cannot bring replevin for property actually in his own possession at the time against an officer who has levied upon but has not removed it: *Hickey v. Hinsdale*, 12 M. 99.

59. Where a constable has levied on personal property in the possession of the judgment debtors, but has never taken it into his own possession or in any way interfered with theirs, the judgment debtors cannot maintain replevin: *Bacon v. Davis*, 30 M. 157.

60. It is not always necessary that goods levied on should be removed in order to constitute such possession as will be deemed a conversion sufficient to entitle a party to the writ of replevin: *O'Connor v. Gidday*, 68 M. 680.

61. Certain property was seized under attachment; an inventory made, and a portion of the goods packed up in a trunk, but left in the owner's office; some of the goods were also removed, and the key to the office was retained for a time by the officer. Held, that this was such a change of possession as would justify replevin: *Maxon v. Perrott*, 17 M. 832.

62. Replevin will not lie for property which, when levied upon, was left and has remained in plaintiff's possession, even though he became receptor for it to defendant: *Morrison v. Lombard*, 48 M. 548.

63. Where a levy on lumber had been indorsed on the writ of attachment, though the lumber was not removed nor any one left in charge of it, the sheriff had sufficient possession to justify replevin: *Hatch v. Fowler*, 28 M. 205.

64. Where an officer who has levied upon a house retains the key and control of the house, his permitting the husband of the owner to occupy it as a workshop is not such a restoration as prevents her bringing replevin: *Gutsch v. McIlhargy*, 69 M. 877.

65. Replevin is founded on an unlawful detention whether there was an unlawful taking or not: *Sexton v. McDowd*, 88 M. 148.

66. A detention appears when it is shown that the defendant withheld the goods and prevented the plaintiffs from having the possession of them: *Johnson v. Moore*, 28 M. 3.

67. Replevin for goods, on the ground that they were wrongfully detained, will not lie where defendant came lawfully into possession of them, unless the wrongful detention is proved: *Adams v. Wood*, 51 M. 411.

68. Replevin will not lie for property which is held in trust by defendant for plaintiff as a mere security for the payment of what the latter owes the former: *Adriance v. Rutherford*, 57 M. 170.

69. Replevin will lie for damages where property taken by defendant has been wrongfully transferred by him and is not in his hands when the writ issues: *McBrian v. Morrison*, 55 M. 851.

70. Replevin for timber cut from land cannot be maintained on a showing merely that plaintiff had title to an undivided half of the land, especially where defendant had possession when the cutting took place: *Hess v. Griggs*, 48 M. 397.

71. Property which by intent and act has been united to the freehold cannot be made the subject of replevin: *McAuliffe v. Mann*, 87 M. 539.

72. Replevin will not lie to recover possession of houses that had been erected on posts and were afterwards removed from land which plaintiff bought under a mechanic's lien sale for the indebtedness of one who had only an equitable interest in the premises: *Wagar v. Briscoe*, 88 M. 587.

73. If a carrier obtains possession of goods wrongfully, or without the owner's express or implied consent, and refuses to deliver them to the owner, the latter may replevy them: *Fitch v. Newberry*, 1 D. 1. And where a carrier has damaged goods to an amount equal to the freight charges, the owner may replevy them and prove such damage to show that nothing was due for freight: *Bancroft v. Peters*, 4 M. 619.

74. A contract of sale made on Sunday being void, the vendor may on a subsequent day tender back the price and replevy the property: *Tucker v. Mourey*, 12 M. 378; *Winfield v. Dodge*, 45 M. 355. But replevin cannot be based on a Sunday rescission of a contract of exchange: *Benedict v. Bachelder*, 24 M. 425.

75. Replevin lies for property which a bailee, who had been holding under option of purchase and agreement to keep safely and return, transfers to a third person's possession: *Dunlap v. Gleason*, 16 M. 158.

76. And it lies for property seized on execution in void garnishment proceedings: *Iron Cliffs Co. v. Lahais*, 52 M. 394.

77. The appointment of a receiver in a suit foreclosing a chattel mortgage is not ground for enjoining replevin by a third party who claims title to the goods: *Merchants', etc. National Bank v. Kent Circuit Judge*, 49 M. 292.

78. One whose agent, exceeding authority, has released a mortgaged chattel, cannot replevy it without restoring what his agent took in lieu; by keeping that, he ratifies the agency: *Nichols v. Shaffer*, 63 M. 599.

2. For property taken for tax.

79. The purpose of H. S. § 8818, prohibiting replevin "for property taken by virtue of any tax, assessment or fine, in pursuance of any statute of this state," is to prevent interference with the officer collecting taxes, in the performance of his duty, by a proceeding that would prevent the speedy realization of the public revenue: *Hill v. Wright*, 49 M. 229.

80. Said statute does not apply where the property seized belongs to another person than him against whom the tax was assessed: *Travers v. Inslee*, 19 M. 96.

81. Nor where there could have been no valid tax levied by regular proceedings: *Leroy v. East Saginaw C. R. Co.*, 18 M. 233.

82. Nor where there was no jurisdiction to levy the tax: *McCoy v. Anderson*, 47 M. 502.

83. Replevin lies for property seized for a tax laid without authority of law as to any part of said property: *Boyce v. Cutter*, 70 M. 539.

84. Where the property of a corporation not liable to be assessed for taxation is seized by a tax collector, it may be replevied, notwithstanding H. S. § 8818: *Le Roy v. East Saginaw C. R. Co.*, 18 M. 233.

85. Replevin will not lie for property that was rightfully assessed in the township where it is stored, and that was held, at the time suit was begun, under tax process valid on its face: *Hood v. Judkins*, 61 M. 575.

86. But while said statute does not cover cases in which the tax is manifestly unlawful on its face, or is levied against a stranger to it, it cannot be defeated by a mere claim that the tax is invalid, if it is apparently regular: *Hill v. Wright*, 49 M. 229.

87. And where a tax levy inflicts an injury cognizable by law, the injured party must seek redress otherwise than by an action of replevin for the property taken: *Ibid.*

3. For exempt property.

88. Replevin lies for exempt property levied upon by creditors: *Elliott v. Whitmore*, 5 M. 532.

89. An execution debtor does not waive the right to bring replevin for exempt goods wrongly seized by having receipted for them to the officer and agreed to deliver them at a specified time or pay the judgment: *Vanderhorst v. Bacon*, 33 M. 669.

90. That a constable levying execution has neglected to make an inventory of the goods taken will not enable the defendant in the execution to replevy them where his *status* was not such as to entitle him to any exemptions: *Ferguson v. Washer*, 49 M. 390.

91. One who is garnished in respect of household goods exempt from execution in his possession belonging to the principal defendant may, pending the garnishment, be sued in replevin for such goods by the owner's wife: *Hanselman v. Kegel*, 60 M. 540.

V. WHO MAY BRING.

92. Plaintiff in replevin must be the person entitled to the possession; the general owner cannot sue where another has the sole right of possession: *Hunt v. Strew*, 33 M. 85.

93. One who has a present right of possession may maintain replevin, and possession is *prima facie* lawful: *Woolston v. Smead*, 42 M. 54.

94. The lessee of attached property is the proper plaintiff, not the lessor: *Hunt v. Strew*, 33 M. 85.

95. One in the sole and peaceable possession of goods, not as an intruder, trespasser or wrong-doer, but as owner, either of the whole or some special property in them, has a valid title as against all mere strangers, which they cannot defeat by showing an outstanding title in some third party: *Van Baalen v. Dean*, 27 M. 104.

96. One from whom chattels have been taken by mere trespassers while he was in peaceable possession and holding subject to claims of persons other than the defendants can maintain replevin: *Ibid.*

97. One who has a right to use property at will can replevy it from any wrong-doer; as, for example, from a sheriff's officer who has taken it on an execution issued against another person: *Tandler v. Saunders*, 56 M. 143.

98. The defeated party in replevin, where there has been no assessment of damages, may, under a change of circumstances, maintain an action to recover the same property: *Deyoe v. Jamison*, 33 M. 94; *Pearl v. Garlock*, 61 M. 419.

99. An officer has no authority to deliver property which he has attached to plaintiff in attachment while the suit is still pending; and therefore plaintiff has no right of possession and cannot maintain replevin for it against one who takes it from the officer: *Vanneter v. Crossman*, 39 M. 610.

100. One who has granted the land excepting the timber can maintain replevin for trees

severed without his consent: *Wait v. Baldwin*, 60 M. 622.

101. Replevin for timber wrongfully removed may be brought by an execution purchaser of land who has not received his deed: *Marquette, H. & O. R. Co. v. Atkinson*, 44 M. 166.

102. License to a grantee of land to cut and carry away the timber would not prevent the licensor from maintaining replevin against one who had purchased the timber from the licensee, where the latter had paid nothing for the land and it was understood by all parties that ownership should remain in the licensor until payment: *Ortmann v. Sovereign*, 42 M. 1.

103. One who is under contract to take charge of a stone-yard for a specified time, as superintendent for the owners; to furnish all the money required to carry on the business; to pay for the labor and purchase the material; to keep an account of his expenses and sales and receipts, and report the same when required so to do; and who is to receive in full for all the money, labor and time so expended in said business the net profits arising therefrom during the said period, acquires by virtue of his contract no title as against his employers in the articles manufactured or the implements and appurtenances of the yard; and if he violates his agreement and removes said property, against the wishes of his employers, from their yard, they may maintain replevin for the same: *Detroit Frear Stone Works v. White*, 85 M. 77.

104. One who has contracted to sell chattels on credit with a present delivery, on condition that the vendee perform certain work he had contracted to do for the vendor, of the contract price of which a certain portion was to be applied in payment for said chattels, cannot, after the work has been substantially performed, transfer separate from the contract any title or interest in the chattels in his vendee's possession to a third person, so as to vest in the latter a cause of action in replevin: *Blaisdell v. Todd*, 88 M. 176.

105. The vendee in a contract for the sale of a certain quantity of pig iron by a manufacturer, to be thereafter delivered, cannot, before inspection or acceptance, and in the absence of any mark to identify any particular piles of iron as belonging to him, recover in replevin against an officer who levies execution against the vendor: *First National Bank v. Crowley*, 24 M. 492.

106. One can bring replevin for goods sold to him, if they have been identified, even though he has not yet received and weighed

them, nor agreed upon or ascertained their quantity: *Sandler v. Bresnahan*, 53 M. 567.

107. Plaintiff had a contract with a firm engaged in sawing lumber by which they were to receive certain saw-logs belonging to him, manufacture the same into lumber, ship the lumber to parties to whom the same had been contracted, receive the payment therefor, and pay over to him a certain amount per thousand feet, retaining the balance for their services. The contract provided that the logs and lumber were at all times to be the property of the plaintiff until he had received the amount so to be paid to him. The logs having been levied upon in the hands of the firm as their property, it was held that plaintiff was entitled to immediate possession, and might maintain replevin therefor: *Bassett v. Armstrong*, 6 M. 397.

108. B., who was entitled to the possession of a certain chattel, replevied it of H. On the trial he was nonsuited, and H. took judgment for the value of the property under the statute. B., still retaining the property he had so replevied, brought trover against H., and recovered the full value of the property instead of damages for its temporary detention. H. paid the judgment, and, claiming the property by virtue of such payment, brought replevin for it against B. Held, that if H.'s taking judgment against B. in the original replevin suit for the value of the property amounted to a conversion, in paying the judgment in the trover suit he had only paid for the property he had converted; and if, on the other hand, the court erred in giving B. damages for the full value of the property, instead of damages for its temporary detention, such error could not transfer the title of the property to H.; and in neither case could he recover: *Hoag v. Breman*, 8 M. 160.

109. A bill of lading was sent to a bank, together with a draft upon the consignee, to whom the bill was not to be delivered until they had paid the draft. The bank, however, let them remove the merchandise to examine it, and they contested payment. Held, that the bank, on paying the draft itself, was fairly entitled to replevy the merchandise; and that the fact that it had first attached it without the consignor's authority was unimportant: *West Michigan Savings Bank v. Howard*, 52 M. 423.

110. One who makes a cash sale subject to acceptance can replevy the goods from a common carrier, or from any one, unless it be a bona fide purchaser, so long as the buyer has neither accepted nor paid for them, or received them, or had the right to compel delivery.

And if payment was due at once the mere acquisition of possession by himself or his assignee could not cut off the vendor's right: *Lentz v. Flint & P. M. R. Co.*, 53 M. 444.

111. A trustee in bankruptcy can maintain replevin for property of the bankrupt sold on an execution against such bankrupt after the decree of bankruptcy: *Coats v. Farrington*, 46 M. 422.

112. Or for property belonging to the bankrupt but held by one who claims under a contract purchaser who has not fulfilled the terms of the contract: *Gordon v. Farrington*, 46 M. 420.

113. Where property is sold under an execution, one who at the time of the sale holds a valid chattel mortgage on it, on which payment is in default, can obtain possession of the property by replevin, unless the purchasers stand in such relation to the parties to the mortgage as entitles them to assail the securities: *Hendrickson v. Walker*, 32 M. 68.

114. Where mortgaged chattels have been taken before foreclosure from the mortgager's possession, under an execution against him, the mortgagee cannot maintain replevin against the officer taking them, notwithstanding the mortgage is past due and unpaid, so long as the officer is proceeding in due course under the statute to a sale of the mortgager's interest: *Cary v. Hewitt*, 26 M. 228; *Macomber v. Saxton*, 28 M. 516.

115. A chattel mortgagee can bring replevin, after demand and refusal, against an officer who has attached the goods as the property of the mortgager while in the latter's possession: *Wood v. Wetmar*, 104 U. S. 786.

116. The mortgagee of a vessel that is afterward libelled for supplies furnished in a home port and is sold by the admiralty court without obtaining jurisdiction can replevy it from the purchaser: *Gould v. Jacobson*, 58 M. 288.

117. One who owns an undivided half of land from which timber has been cut cannot maintain replevin for such timber on proof merely of such ownership: *Hess v. Griggs*, 43 M. 397.

118. Replevin lies by a tenant in common who is entitled to the possession of an undivided interest in personal property against a wrong-doer who is a stranger to the title: *McArthur v. Oliver*, 60 M. 605.

119. Replevin will not lie for an undivided interest in a chattel where the execution of the writ will operate to deprive of his right of possession a co-tenant whose title is undisputed: *Kindy v. Green*, 32 M. 310.

120. A tenant in common of logs cannot

bring replevin against his co-tenant for his share thereof: *Busch v. Nester*, 70 M. 525 (June 8, '88).

121. Where one of two persons owning chattels in common has mortgaged his share to the other he cannot maintain replevin therefor against the mortgagee, especially if he has made no offer to redeem: *Kline v. Kline*, 49 M. 419.

122. The rule that a tenant in common of chattels cannot maintain replevin against his co-tenant for the common property applies to tenants in common of ships and vessels: *Wetherell v. Spencer*, 3 M. 128.

123. In replevin for an undivided interest in a crop of wheat standing in shocks, the defendant, who has no interest in the other undivided half, cannot object to the action on the ground that the wheat was undivided when the writ issued: *Crapo v. Seybold*, 36 M. 444.

124. One who has leased a farm upon the tenant's agreement to deliver in payment half the produce is a tenant in common in respect to such produce, and can maintain replevin for it after it is in condition to deliver: *Sutherland v. Carter*, 52 M. 471.

125. A legatee may bring replevin for the possession of a specific bequest which the executor has left in his possession, but has taken away: *Eberstein v. Camp*, 37 M. 176.

126. A voluntary assignee for the benefit of creditors cannot replevy the property from a mortgagee in possession under a fraudulent mortgage: *Wakeman v. Barrows*, 41 M. 363. *

127. One partner may bring replevin for the whole partnership property if it is seized on execution for another's individual debt: *Hutchinson v. Dubots*, 45 M. 143.

128. In replevin to recover property acquired by a wife before her marriage she should join as plaintiff, and if he sues alone he will be nonsuited; nor need the non-joinder be pleaded in abatement: *Brown v. Fifield*, 4 M. 322.

129. Husband and wife may join in replevying exempt property seized on execution: *Shepard v. Cross*, 38 M. 96.

130. A wife may, in her own name, bring replevin for household property exempt from execution; she may join her husband as plaintiff, but need not do so: *Hanselman v. Kegel*, 60 M. 540.

131. A wife living apart from her husband may, after due demand, bring replevin against him for her individual goods: *White v. White*, 58 M. 546.

132. A husband who has left his wife can-

not replevin from her household goods that would be exempt from execution: *Smith v. Smith*, 52 M. 538.

133. An agent to foreclose a chattel mortgage, who with the mortgager's consent has taken possession of the mortgaged goods and has kept them at his own expense awaiting sale, may bring replevin in his own name against the mortgager who surreptitiously takes them from him: *Eldridge v. Sherman*, 70 M. 266.

134. A pound-master may bring replevin for animals escaped or rescued and found outside the village limits: *Grover v. Huckins*, 26 M. 476.

135. An attorney may purchase a chattel from his client, and may then bring replevin against a third person to recover possession thereof. H. S. § 7185, which forbids certain dealings by attorneys in the way of getting demands with intent to prosecute them for profit, does not apply: *Town v. Tabor*, 84 M. 262.

As to replevin by agent appointed to reclaim timber cut from public lands, see OFFICERS, § 17; PUBLIC LANDS, § 190.

VI. WHO LIABLE.

136. Demand and refusal before bringing replevin will not make defendant's lawful possession unlawful: *Adams v. Wood*, 51 M. 411.

137. Replevin lies to recover from even a *bona fide* purchaser property which had been taken by the latter's vendor without the consent or authority of the owner: *Parish v. Morey*, 40 M. 417.

138. Replevin does not lie against one who is not unlawfully detaining the property at the time the affidavit for the writ is sworn to and the writ delivered to the officer. So held where the writ was sworn out and held until defendant could be caught in temporary possession: *Burt v. Burt*, 41 M. 82.

139. Replevin will not lie against one to whom the property has been delivered as security for rent, and who has sold and delivered it to a third person: *Gildas v. Crosby*, 61 M. 413.

140. A. sued B. in replevin for the skin of a fox, which he claimed because the animal was first started and wounded by him and chased to earth by his dog, and finally caught by the dog and killed by his help. There was no evidence tending to show that B. had or claimed any interest in or control over the skin. Held, that there was no ground for the action: *Kittridge v. Miller*, 45 M. 478.

141. Replevin will not lie against one not in possession, and who cannot deliver the property, unless he has concealed, removed or disposed of the same with intent to avoid the writ: *Gildas v. Crosby*, 61 M. 413.

142. Replevin will lie against the assignee of property, even though he allows it to remain in the assignor's hands, unless he clearly makes known that he does not claim it: *Coomer v. Gale Manuf. Co.*, 40 M. 691.

143. Replevin can be brought against an executor or administrator (H. S. § 5902): *Singer Manuf. Co. v. Benjamin*, 55 M. 330.

144. Replevin lies against a sheriff for goods actually held by a receiptor: *Mayhue v. Snell*, 37 M. 305.

145. A wife owning goods levied on for the husband's debt may sue the officer in replevin though the goods are only in charge of the officer, who refuses, on her demand, to let her remove them from the premises, and avows his purpose to sell them unless the matter is compromised: *O'Connor v. Giddy*, 63 M. 630.

146. A tax collector who has levied upon property for a tax in a case in which no tax could by law have been levied cannot defend under his warrant as against replevin: *Le Roy v. East Saginaw C. R. Co.*, 18 M. 233.

147. An execution creditor on whose premises the property seized has been stored is properly made a defendant in an action of replevin against the officer levying execution: *McMillan v. Larned*, 41 M. 521.

148. The evidence in a particular case held sufficient, as connecting two parties with the detention, to warrant their being joined as defendants: *Deyoe v. Jamison*, 33 M. 94.

149. An officer who levies upon chattels by virtue of a tax warrant fair on its face is liable in replevin if the goods belonged to a corporation exempt from taxation: *Le Roy v. East Saginaw C. R. Co.*, 18 M. 233.

That process fair on its face does not necessarily protect officer from replevin, see OFFICERS, § 191.

When United States marshal may be sued in state court, see COURTS, §§ 152-155.

VII. THE WRIT.

(a) *In general.*

150. Partners must sue in the circuit court in their individual names. A writ of replevin issued on behalf of partners in the name of their firm is a nullity: *Smith v. Canfield*, 8 M. 493.

151. A justice's writ of replevin issued in a partnership name is not sustainable where the

amendment permitted by H. S. § 6872 in cases where suit is so brought shows that there was only one plaintiff: *Stirling v. Heintzman*, 42 M. 449.

152. Where part only of the property was taken on the first writ and an *alias* was issued for the remainder, and the plaintiff had judgment, *held*, that it was immaterial whether the *alias* was regular or not, as the judgment was the same the plaintiff would have been entitled to under the statute had no *alias* issued: *Mazon v. Perrott*, 17 M. 332.

153. An *alias* writ of replevin may be issued for the purpose of personal service where the property has been seized on the original writ and turned over to the plaintiff, but personal service has not been had: *Bell v. Mecosta Circuit Judge*, 26 M. 414.

154. The objection that the writ was made returnable on a Sunday was *held* waived by defendant's appearing, pleading the general issue and going to trial without objection: *Pierce v. Rehfuess*, 35 M. 53.

155. A replevin suit begins as soon as a writ taken out in good faith and sworn to is ready for execution, and the entry fee is paid; and any reasonable delay before delivering it to an officer for execution does not postpone the date of beginning suit: *McMillan v. Larned*, 41 M. 521.

156. Plaintiff in replevin has full control of the writ after taking it out, and may even recall it after delivering it to an officer for execution: *Ibid*.

157. In case the property is claimed, held and apparently owned by a third person, and hence is not detained by defendant from plaintiff or so situated as to be subject to surrender by defendant, the process does not require the officer to seize it; and if he proceeds to take it, though it be the same property described, his writ will not protect him if such third person is the *bona fide* owner and holder: *Sexton v. McDowd*, 38 M. 148.

158. A sheriff's return to a writ of replevin may be amended on due notice and proper showing, but if not amended is conclusive as made: *Green v. Kindy*, 43 M. 279.

159. A return of service upon defendant "by delivering a certified copy of said writ to his wife personally," it not appearing that defendant could not be found, and that the service was at his dwelling, is bad: *Wheeler v. Wilkins*, 19 M. 78.

(b) *Description of the property.*

160. The description in a writ of replevin is sufficient if with outside help the officer

executing it can identify the property: *Sexton v. McDowd*, 38 M. 148.

161. Where a writ of replevin describes a building to be replevied as on a specified lot, it speaks from time of the issuing of the writ; and the fact that at a later time the building was elsewhere does not defeat the proceeding: *Elliott v. Hart*, 45 M. 234.

162. Replevin was brought for a building that had been sold on execution. The replevin writ described it as on lot 7 of block 6, while the certificate of levy and notice of sale referred to it as on lot 8. *Held*, that the variance would not exclude evidence of the proceedings on execution, and that parol evidence was admissible to identify the property actually taken: *Ibid*.

163. A judgment in replevin for a quantity of stacked wheat, upon which plaintiff had a lien under a chattel mortgage, was reversed because the description of the land on which it grew, as given in the writ of replevin, differed from the description in the chattel mortgage as given in the record, which contained nothing showing that it was incorrect: *Coman v. Thompson*, 43 M. 389.

164. A writ of replevin is void if it does not describe the property to be seized; a description in the affidavit annexed to the writ is not sufficient: *Paterson v. Parsell*, 38 M. 607.

165. But the fact that the description given in the writ is of an undivided interest in a chattel held by a co-tenant with plaintiff does not deprive the court of jurisdiction to award judgment for return or for value. It is only where no description at all is set forth in the writ that such jurisdiction fails: *Humphrey v. Bayn*, 45 M. 565.

166. In replevin for grain or other chattels defined by measurement, a description indefinite in point of quantity, and not otherwise made certain, is fatally defective: *Stevens v. Osman*, 1 M. 92; *Farwell v. Fox*, 18 M. 166.

167. "A quantity of corn consisting of about two hundred bushels, and a quantity of rye consisting of about one hundred bushels," *held* an insufficient description: *Stevens v. Osman*, 1 M. 92.

168. A writ of replevin called for the seizure of "250 bushels of wheat of the Fultz variety grown upon plaintiff's farm;" the proofs showed that the wheat taken was of the Clawson variety. *Held*, that this variance was immaterial, as the writ fully identified the wheat as that grown upon plaintiff's farm, and as there was no testimony showing that any wheat of the Fultz variety was grown there: *Wattles v. Dubois*, 67 M. 813 (Oct. 20, '87).

169. A tenant in common of a crop of wheat brought replevin against his co-tenant, who had wrongfully refused to allow him to take his share. *Held*, that the writ was not premature in calling for the seizure of a certain number of bushels, although the wheat at the time of the writ's issuance had been harvested but not threshed: *Ibid*.

170. The description — in writ and declaration — of the property as "six oxen" held sufficient: *Farwell v. Fox*, 18 M. 166.

171. The description, "two yearlings, red and white in color," is sufficient: *Kelso v. Saxton*, 40 M. 666.

172. The following description in a writ of replevin, "sufficient of the boots and shoes now in the store or building situate on lot 182 of Moore's plat of the village of Edmore," etc., "and now occupied by defendant herein, to satisfy the claim of the plaintiffs herein, as mortgagees of said goods, amounting to \$805," was held sufficient, it appearing that plaintiff's mortgage in fact covered the entire stock: *Pingree v. Steere*, 68 M. 204.

173. The description of the property in the affidavit and writ as "one sewing-machine and one pool-table" is sufficiently specific: *Proper v. Conkling*, 67 M. 244.

VIII. THE AFFIDAVIT.

174. The affidavit cannot be made before the cause of action has accrued: *Darling v. Tegler*, 30 M. 54.

175. The office of the affidavit in replevin in justice's court is to confer jurisdiction; and it can only be looked into to ascertain that fact, not made to operate as a defence on the trial upon the merits: *Elliott v. Whitmore*, 5 M. 532.

176. The jurisdiction to issue the writ of replevin in the circuit court does not depend on the affidavit; the statute contemplates the issuing of the writ before any affidavit is made, but provides that it shall not be executed till the affidavit is made and annexed to it: *Baker v. Dubois*, 32 M. 92.

177. The affidavit must show that plaintiff is the person entitled to possession: *Hunt v. Strew*, 33 M. 85.

178. The affidavit is essential before the writ can be served, and it must show a wrongful detention of plaintiff's property: *Wilbur v. Flood*, 16 M. 40.

179. The affidavit alleged that defendant had the property in his possession "unlawfully from the possession" of the plaintiff. *Held*, that the omission of the word "detained" after "unlawfully" was not a fatal defect: *Smith v. Dodge*, 37 M. 354.

180. The averments in the affidavit — "that the property was not taken for any assessment levied by virtue of any law of the state," and "that it was not seized under any execution against the goods and chattels of the plaintiff liable to execution," — being required by the statute, must be inserted, without regard to the nature of the property replevied: *Phenix v. Clark*, 2 M. 327.

181. The affidavit stated that the goods had not been "seized under execution in attachment against the goods and chattels of this deponent liable to execution," etc., whereas the word "or" should have been used instead of "in," and instead of the words "this deponent" the plaintiff should have been described, inasmuch as the deponent was not the plaintiff. *Held*, that these defects were merely clerical, and were waived by pleading the general issue: *Baker v. Dubois*, 32 M. 92.

182. Under R. S. 1838, where defendant's christian name was stated incorrectly (James for Joseph) in the affidavit, the court might, after service of the writ and before the execution of the replevin bond, permit the plaintiff to file a new affidavit, and thereupon to amend the writ by inserting the true name: *Parks v. Barkham*, 1 M. 95.

183. Mere clerical defects in an affidavit annexed to a writ of replevin are waived by pleading to the merits: *Baker v. Dubois*, 32 M. 92.

184. Where defendant in replevin is personally served, but nothing is taken on the writ, the action becomes merely personal; and by appearing and joining issue and allowing the case to be adjourned from time to time without objection, he waives the right to have the writ set aside for defects in the affidavit and bond: *Clark v. Dunlap*, 50 M. 492.

Presumption that affidavit correctly states value, see *supra*, §§ 6, 8.

IX. REPLEVIN BONDS.

(a) In general.

185. Plaintiff in replevin is not bound to give a bond as a condition to maintaining his action: *McBrian v. Morrison*, 55 M. 351.

186. Whether, in replevin for distrained beasts, the replevin bond can be given before appraisal, *quere*; but, if so given, any objection to the irregularity is waived by pleading issuable and going to trial on the merits; and where the jury has found that there was no right in defendant, the bond's irregularity could not prejudice him and could not affect

the judgment: *Pistorius v. Swarthout*, 67 M. 186.

187. As H. S. § 8324 allows a replevin bond to be signed by some one in behalf of the principal, such bond may be sufficient though signed by none but sureties: *Cahill's Appeal*, 48 M. 616.

188. A replevin bond containing the principal's name in the body of it, but not signed by him, is nevertheless valid as against the surety if delivered by the latter with the intention that it shall be effective and binding without the principal's signature: *Ibid.* See *Green v. Kindy*, 43 M. 279.

189. A bond in replevin taken by the deputy sheriff in his own name is in substantial compliance with the statute: *Wheeler v. Wilkins*, 19 M. 78.

190. Where a justice of the peace issued a writ of replevin before any bond had been filed by the plaintiff, and approved it next day under a misapprehension as to a surety's qualifications, it was held that § 6857 would not prevent the defendant from excepting to the sureties: *Johnson v. Stilson*, 42 M. 541.

191. The sheriff in a replevin suit is not authorized or directed by the statute to deliver to the plaintiff the property seized upon the writ until the plaintiff furnishes him a bond with sureties of undoubted sufficiency. He accepts them, when excepted to, at his peril, unless directed to do so by the court or the defendant: *People v. Lee*, 65 M. 557 (April 28, '87).

192. The failure of the sureties in a replevin bond to justify their responsibility in writing upon such bond is not jurisdictional, and is waived when not seasonably objected to: *Hatch v. Christmas*, 68 M. 84.

193. It is competent, in giving a statutory replevin bond, to add to the condition a covenant of the same tenor, and to bring action upon it in case of a breach. In such an action damages should be recovered instead of the penalty of the bond: *Prentiss v. Spalding*, 2 D. 84.

194. Under R. S. 1838 the court could not compel the plaintiff to file a new replevin bond: *Lynch v. Bruce*, 2 D. 123. But see H. S. § 8380.

195. Where bond is given it stands to defendant in place of the property until the suit is finally determined, and meanwhile he cannot contest plaintiff's right of possession: *Ford v. Bushor*, 48 M. 534.

196. And plaintiff's right to possession continues even after judgment for defendant and while the case is pending in the circuit court on *certiorari*: *Clark v. West*, 23 M. 242.

197. Sureties on a replevin bond are not parties to the action in replevin and have no control over it: *Lindner v. Brock*, 40 M. 619.

(b) *Actions on replevin bonds; defences; recovery.*

198. The sheriff's return to a writ of replevin, certifying that the plaintiff in replevin had not filed a bond, is conclusive upon all the parties to the replevin suit, and defeats an action upon an alleged bond: *Green v. Kindy*, 43 M. 279.

199. Where plaintiff in replevin before a justice takes an appeal, his appeal bond gives defendant a cumulative security which does not supersede that furnished by the bond in replevin: *Brabon v. Pierce*, 34 M. 89.

200. Removal of the cause to another court does not discharge the sureties on a replevin bond, where the removal law was in force when the bond was given: *Reusch v. Demass*, 84 M. 95.

201. An action on a replevin bond based upon a lawful judgment cannot be defeated on the ground that the judgment was entered by consent: *Estey v. Harmon*, 40 M. 645.

202. But where a plaintiff in replevin made a secret and fraudulent agreement that judgment might be entered for defendant, to whom the replevin bond was afterwards assigned, held, that the sureties were discharged from their liability thereon, and might have an action thereon enjoined: *Wright v. Hake*, 38 M. 525.

203. One who replevies property transferred to him in fraud of creditors, and levied upon accordingly, cannot after suffering judgment in replevin enjoin a suit on the replevin bond, on the ground that the debtor has made a composition with creditors and thereby recovered his assets: *Jacobson v. Metzgar*, 43 M. 403.

204. The obligation of the surety in a replevin bond is determined by the statute, and cannot be enlarged by the fact that circumstances, accidental or otherwise, render a judgment in replevin impossible: *Scott v. Scott*, 50 M. 372.

205. If a replevin suit abates through no fault of plaintiff, as by the justice's removal from his township, defendant's remedy is not upon the bond, but he may bring replevin or trover: *Kidder v. Merryhew*, 32 M. 470.

206. So where the replevin suit was abated by the justice's failure to appear at his office on the return day of the writ, suit could not be brought on the bond; but other remedies might be resorted to if plaintiff in replevin

should detain the goods: *Scott v. Scott*, 50 M. 372.

207. After judgment for the defendant in replevin, an execution was issued in form in *assumpsit*, and purporting to be in favor of a plaintiff. It was not amended, but, after return unsatisfied, the replevin bond was sued. It was *held* that this could not be considered an execution on the judgment, and that consequently no liability upon the replevin bond was created by its return: *Williams v. Vail*, 9 M. 162.

208. There is no liability on a replevin bond without proof of execution in the action; the judgment should also be put in evidence: *Phillips v. Waterhouse*, 40 M. 273.

209. But in declaring in an action on a replevin bond, the issue and return of execution in the replevin suit need not be averred: *Jennison v. Haire*, 29 M. 207.

210. Where action was brought on a replevin bond against all the obligors, two of whom were defaulted, and the plaintiff, instead of proceeding to trial as to the others, discontinued as to them and took judgment against those who were defaulted, this action was held erroneous: *Winslow v. Herrick*, 9 M. 380.

211. A replevin bond, when judgment is given for the return of the property, binds one to take active measures to surrender it, and not simply to passively submit to a forcible taking of it by legal process; obligors on such a bond, who have declined on demand by an officer armed with a proper writ to make such surrender, cannot, when sued on their obligation, set up in defence the failure of the officer to find and seize the property; this would permit them to take advantage of their own wrong: *Jennison v. Haire*, 29 M. 207.

212. Plaintiffs in replevin, against whom a judgment for a return of the property has been rendered, are estopped, when sued upon their replevin bond, from setting up in defence any infirmity in the proceedings by which they obtained the possession of the property: *Ibid*.

213. In an action on a replevin bond, the judgment in the replevin suit for a return of the property cannot be impeached as evidence for lack of proof that any affidavit accompanied the writ of replevin; it would be presumed, in aid of such judgment of a court of record, that all the proceedings essential to its validity were taken: *Ibid*.

214. Defendant in action on a replevin bond can show that the principal obligor had property in the county where the judgment in replevin was entered which was subject to

execution at the time of the judgment, and that the plaintiff, under a private arrangement with him, released him for a consideration and relied on the sureties: *Greenlee v. Lowing*, 85 M. 63.

215. Dealings with the principal obligor in a replevin bond for her discharge, without the assent of the sureties therein, will release the sureties; and instructions to the sheriff, whether consistent with the release or not, could not change the legal effect of the agreement previously made: *Ibid*.

216. Where a judgment in replevin is rendered on a waiver of a return for the value of the property, all proper questions must be litigated on the assessment of damages, and are not afterwards open in an action on the replevin bond: *Williams v. Vail*, 9 M. 162; *Ryan v. Akeley*, 42 M. 516; *Pearl v. Garlock*, 61 M. 419.

217. If the pendency of bankrupt proceedings invalidates a levy they should be shown in an action of replevin to recover the value of the goods levied on, and not withheld to be litigated in proceedings relating to the replevin bond: *Jacobson v. Metzgar*, 43 M. 403.

218. In an action on a replevin bond it cannot be shown that property already adjudged to belong to the principal in the bond was really only held by him to sell on commission: *Henry v. Ferguson*, 55 M. 399.

219. A finding in a replevin suit of general ownership in a specified person is only to determine rights between the parties to that suit, and is not so conclusive in a subsequent suit on the replevin bond as to establish his right to mortgage the property, especially if the mortgage postdated ownership: *Ibid*.

220. Where property attached was replevied by a third party, and the defendant in replevin took judgment by default, it was *held* that as against the plaintiff the judgment showed that the defendant in attachment had a leviable interest that would bind him and his sureties in an action on the replevin bond: *Ryan v. Akeley*, 42 M. 516.

221. A replevin bond in justice's court covers costs recovered by defendant on appeal; it is not satisfied by a return of the property, with costs, on judgment by the justice: *Brabon v. Pierce*, 84 M. 39.

222. A replevin bond covers the costs of all courts, even though the case be removed on *certiorari* from before a justice, if a final judgment on writ of error awards costs of all the courts: *Monroe v. Heintzman*, 46 M. 12.

223. In an action against the sureties in a replevin bond, no judgment can be recovered for an amount exceeding the penalty and costs

of suit; and an allowance of interest beyond the penalty, from the time of breach of the condition, is erroneous: *Fraser v. Little*, 13 M. 195.

224. Where plaintiff in replevin is nonsuited, defendant, if he waive a return of the property, is entitled to a judgment for its full value. And in an action upon the replevin bond afterwards, the measure of damages is the amount of the judgment; and the obligors cannot show, in mitigation of damages, that defendant in replevin was but a part owner of the property (but see H. S. § 8354): *Williams v. Vail*, 9 M. 162.

225. Under H. S. § 8354, which permits defendants in a suit on a replevin bond to show, in mitigation of damages the extent of plaintiff's special interest, it is held admissible, in an action by a sheriff on a bond conditioned for the return of property which he had held under attachments, to show that the attachment debtor had been adjudged bankrupt and an assignee had been appointed for him before execution had issued in the attachment cases. Such evidence does not dispute, but admits, the debtor's title, and the sureties are not therefore estopped from giving it: *Lindner v. Brock*, 40 M. 618.

226. Sureties in a suit on replevin bond conditioned to return property that had been held by the sheriff under attachment may show in mitigation of damages that the demand on which the attachment was taken out had been afterwards paid: *Ibid.*

227. Defendants in a suit brought by the sheriff on a replevin bond may show that after the property had been taken from him he had seized and sold part of it on other writs: *Ibid.*

228. A sheriff suing on a replevin bond is equitably entitled to not more than will indemnify him; and he was not damnified by proceedings against him in replevin for property in which he had no special interest: *Ibid.*

229. H. S. § 8354, providing that in an action on the replevin bond the defendants may show that the obligee had only a special property, only applies where the obligee has taken judgment for a return of the property and sues on the bond to recover its value; and it cannot apply where the value is not sued for: *Ryan v. Akeley*, 42 M. 516.

230. The plaintiff in replevin suffered judgment by default, and the defendant waived return and had his damages assessed. Held that, in suing on the replevin bond, the defence could not introduce evidence in reduction of the judgment in replevin, as allowed by H. S. § 8354 in cases where judgment had been taken for a return: *Ibid.*

231. In an action on a replevin bond a surety thereon who has become owner of a judgment under which a valid levy was made is entitled to have the amount of the judgment deducted from the value of the replevied property if the claim was not presented with those on which the lien was grounded. So, also, property owned by the principal in the bond may be deducted, though included in the lien, if it had not belonged to the execution defendant and had gone to a *bona fide* holder: *Henry v. Ferguson*, 55 M. 399.

232. It seems that when sued on a replevin bond the sureties are entitled to reduce the judgment in replevin by showing that they had a special interest in the property; as, *e. g.*, that one of them held a chattel mortgage on it which antedated the levy on which the suit was grounded: *Henry v. Quackenbush*, 48 M. 416.

233. A defendant in replevin should not recover upon the replevin bond more than his legal damages. If he had merely a possessory or partial interest in the property, and was in no position to hold the entire interest for some one else, he should not recover the full value: *Pearl v. Garlock*, 61 M. 419.

X. DISMISSAL.

234. Failure to give bond in replevin is no ground for dismissing the suit, which can still be tried on the merits: *McGuire v. Galligan*, 57 M. 39.

235. An officer who has seized goods by virtue of legal process is a merely nominal defendant to an action of replevin for them; and, unless the real party in interest has refused to indemnify him, cannot prejudice the latter's rights by stipulating with the plaintiff for the dismissal of the suit without judgment: *Casper v. Kent Circuit Judge*, 45 M. 251.

236. It is erroneous to dismiss a writ of replevin on motion based upon affidavits on the ground that defendant was a deputy-sheriff and that the writ was directed to the sheriff and served by another deputy, that the writ was issued without authority of law, and that the service was unlawful and irregular and gave the court no jurisdiction; such questions are not properly triable on affidavits, but should in some way be brought to trial on evidence upon an issue of fact. Whether they are triable under the general issue or should be made the subject of a plea in abatement, *quere*: *Jewell v. Lamoreaux*, 30 M. 155.

237. Dismissal of a writ of replevin amounts to judgment of nonsuit: *Stall v. Diamond*, 37 M. 429; *Humphrey v. Bayn*, 45 M. 565.

238. A writ of error is the proper remedy to review the decision of a circuit judge dismissing a writ of replevin and quashing all proceedings with costs on a motion: *Jewell v. Lamoreaux*, 20 M. 155.

XI. PLEADINGS.

239. The forms prescribed by statute for actions of replevin are applicable alike to justices' courts and courts of record: *Elliott v. Whitmore*, 5 M. 532.

240. Oral pleadings are admissible in justice's court: *Smith v. Dodge*, 37 M. 354.

241. In replevin for property taken in execution, and claimed by plaintiff as exempt, the declaration need not specifically set out the character of the property so as to show the exemption: *Elliott v. Whitmore*, 5 M. 532.

242. A count that the plaintiff "was lawfully possessed as of his own property of one certain gray mare, and was lawfully possessed as aforesaid of two yearling colts," sufficiently avers the ownership of the plaintiff in the colts: *Haseig v. Tripp*, 20 M. 216.

243. A surety who, having paid his principal's debt, sues in replevin for an article to a lien upon which he has been subrogated, need not allege an assignment in his declaration: *Myres v. Yapple*, 60 M. 339.

244. In replevin a plea in abatement was interposed, setting up the pendency of a prior suit in replevin, by virtue of the writ in which the property in controversy was taken and held by one of the defendants as sheriff. The plea did not allege that any affidavit was attached to the writ in the first suit, or that the writ commanded the sheriff to take the property in controversy. *Held*, that the plea was insufficient on both grounds: *Belden v. Laing*, 8 M. 500.

245. A plea in abatement that defendant took the goods as deputy United States marshal on an execution issued out of the federal circuit court against a third person named is bad on demurrer if it fails to allege that the execution was issued on any judgment, or that any judgment had been obtained against either the plaintiff in replevin or the defendant in the execution, or that the property had been levied upon as belonging to the defendant in execution: *Heyman v. Corell*, 36 M. 157.

246. A plea in abatement to an action of replevin for goods seized on an execution issued against a third person merely alleged that defendant seized them under a certain described execution, without also alleging that they were seized as the property of the

defendant named therein or were liable to seizure for his debt; whether sufficient, *quere*: *Carew v. Matthews*, 41 M. 576.

247. A plea in abatement to a suit in replevin asserted that defendant had seized and held the goods as deputy-sheriff. Demurrer to the plea was overruled, return waived and judgment given for defendant. *Held*, that the plea should have stated facts, and not merely matters of conclusion, so that the court could have determined whether the defendant's seizure and custody were lawful, and what became of the property after it was seized on the writ of replevin, in default of which the demurrer should have been sustained and judgment given that defendant answer over: *Dubois v. Hutchinson*, 40 M. 262.

248. Whether the defence that the property sought to be replevied was held, at the time of the commencement of the replevin suit, under the process of another court, should not be pleaded in abatement to the jurisdiction rather than in bar, *quere*: *Weber v. Henry*, 16 M. 399.

249. In replevin by one plaintiff against three defendants, plea in abatement was interposed of a prior action in replevin by two of the defendants against the plaintiff and another, by virtue of which the other defendant as sheriff took and detained the property. *Held*, that the issues in the two cases were not identical, as the possessory rights of the sheriff under his writ, if valid, could not be impaired or affected, although the plaintiff in the present suit should show a perfect title as against the other defendants, the plaintiffs in the first suit: *Belden v. Laing*, 8 M. 500.

250. Under R. S. 1888, as amended by laws of 1889, p. 230, the general issue put in issue every fact stated in the declaration necessary to sustain the plaintiff's action, and not the detention of the property only: *Loomis v. Foster*, 1 M. 165.

251. The defence that the property was taken under legal proceeding against a third person claimed to be the owner thereof is admissible under the general issue without notice: *Snook v. Davis*, 6 M. 156; *Craig v. Grant*, 6 M. 447.

252. Anything going to show that plaintiff had no right to the possession when he began suit is admissible under the general issue: *Belden v. Laing*, 8 M. 500; *Singer Manuf. Co. v. Benjamin*, 55 M. 330.

253. No special plea or notice of lien is necessary in replevin proceedings. If the facts make out a lien judgment may be given for it: *Gratwick Lumber Co. v. Lewis*, 66 M. 533 (June 23, '97).

254. Under the plea of the general issue,

without notice, defendant may show his official character as special administrator, and that as such he claims to hold the property replevied: *Singer Manuf. Co. v. Benjamin*, 55 M. 330.

255. By pleading the general issue, where the affidavit, writ and declaration allege value under \$100, defendant admits a justice's jurisdiction and cannot afterwards question it on the ground that the value of the property exceeded the jurisdictional limit of \$100: *Henderson v. Desborough*, 28 M. 170.

256. Where the notice of special defence in replevin for timber merely puts in issue the title to the land at the time the timber was cut, the existence of a remedy by way of action for waste is not in question: *Hess v. Griggs*, 43 M. 397.

257. Replevin was brought in justice's court designating defendant by his surname and by the initials of his christian name. No misnomer was pleaded, and judgment, which was rendered for plaintiff, was appealed by defendant in his full name, after pleading to the merits below. *Held*, that the informality was no longer material: *Baldwin v. Talbot*, 43 M. 11.

258. In replevin a defective description of the property must be taken advantage of by special demurrer, as it would be held sufficient after verdict, avowry, or plea of property in defendant: *Stevens v. Osman*, 1 M. 93.

259. A motion to quash the writ of replevin in a cross-suit is not the proper procedure for getting rid of the cross-action. The second proceeding may be shown in bar of the first, or the defendant in the cross-writ can plead in abatement if he wishes to raise the question at the outset: *Fisher v. Marquette Circuit Judge*, 58 M. 450.

XII. EVIDENCE; DEFENCES.

260. A plaintiff in replevin in opening his case should set forth any special or proprietary interest on which he relies, and not rest it on a mere presumption of possession; he should not reserve evidence of his special interest to make out a new case, if necessary, by way of rebutting evidence that the real right of possession was in another: *Woolston v. Smead*, 42 M. 54.

261. Whether plaintiff in replevin need show that the property taken on the writ was the same as described in the declaration, where there was a variance in description between the writ and the certificate of appraisal, *quere*: *Burrows v. Bailey*, 34 M. 64.

262. In replevin for shingles claimed by

both parties to have been purchased from the mill-operators who cut them, the burden of proving title is not shifted from plaintiff to defendant because of the operators' wrongdoing in selling their shingles twice and mixing them: *Marthinson v. Wagner*, 63 M. 543.

263. When replevin is brought for exempt property seized under execution, plaintiff must prove every fact necessary to establish the legal conclusion that the property is exempt: *O'Donnell v. Segar*, 25 M. 367.

264. Under the ordinary declaration plaintiff may show that the property replevied was exempt from the execution whereunder defendant held it: *Elliott v. Whitmore*, 5 M. 532.

265. Anything going to show that the plaintiff had no right to the possession when he commenced his suit is a complete bar to the action and is to be admitted in evidence: *Belden v. Laing*, 8 M. 500; *Clark v. West*, 23 M. 242.

266. As, that the defendant lawfully held the property as against the plaintiff by virtue of a prior writ of replevin: *Ibid*.

267. Where, during pendency before a justice of a suit in replevin, possession has been awarded to one of the parties, he is entitled to it as against the other while the suit is pending, subject only to interruption by service of a precept to return the property; and if the suit is decided against him and he gives due notice of his intention to remove the cause, as by *certiorari*, he has still the right to retain possession after completing the remaining steps required by law for such removal. The completion of such steps suspends the further operation of the justice's judgment and leaves the writ by which the suit was begun in legal force. And where one had surrendered the property upon a precept issued after he had declared his intention to remove the cause, it was *held* that he was thereafter at liberty to regain possession by his own act, if he could do so peaceably and without personal interference. And *held*, also, that, for his protection, the proceedings for removal and the judgment for reversal in the higher court related back to the time of giving notice, and that in a suit in cross-replevin no plea *puis darrein continuance* was needed to support evidence of such judgment of reversal, though granted after the last continuance: *Clark v. West*, 23 M. 242.

268. In replevin it is competent to disprove plaintiff's title to the goods, and one way to do this is to show that some one else owns them: *Nicholson v. Dyer*, 45 M. 610.

269. Replevin is a possessory action, and, as a general rule, a party in actual and undis-

puted possession of property cannot be required, as against a mere intruder, to show how he became possessed of the title, or even that he has any title; but where, instead of proving possession, the plaintiffs undertake to prove title deduced from a third person, and the evidence as to possession is merely incidental to the question of title, the case turns upon the question whether there had been a completed sale: *Hatch v. Fowler*, 28 M. 205.

270. Defendant in replevin cannot object that plaintiff acquired title by an abuse of confidence, so long as the person from whom he acquired it does not complain: *Town v. Tabor*, 34 M. 262.

271. Where replevin against a sheriff holding under attachments is brought by one who claims by virtue of chattel mortgages and sales thereunder, it is a full defence to show that plaintiff acquired his rights with knowledge of the antecedent rights of the attaching creditors: *Barmon v. Clippert*, 58 M. 377.

272. Whether the ousted owner of a freehold sued in replevin for logs cut by his dis-seizor may not show the true title, *quere*: *Busch v. Nester*, 62 M. 381.

273. Where the owner of land wherefrom trees have been cut is sued in replevin for the logs by one who claims to have been in possession of the land in good faith under a tax-deed, he may assert his title in defence though it has not been established in an action of ejectment: *Busch v. Nester*, 70 M. 525.

274. Defendant may testify that he pointed out plaintiff's property, as bearing on such confusion of goods as justified seizure of the whole: *Sleight v. Henning*, 12 M. 371.

275. Defendant in replevin for goods sold him under written lien for payment may show that before demand he sold the property to specified third persons, not parties to the record and ignorant of any lien on the goods, no notice of any lien having been on file: *McMorran v. Murphy*, 68 M. 246.

276. In replevin by a mortgagee for chattels held under attachment and execution levies, the fact that plaintiff, after getting possession, sold the chattels on foreclosure and bid them in himself, is admissible to show that this was his purpose in demanding them: *Wilson v. Montague*, 57 M. 638.

277. In replevin for property seized in satisfaction of a village tax regularly assessed, the validity of the village's organization and charter, whereunder it has acted without question for twelve years, cannot be attacked: *Coe v. Gregory*, 53 M. 19.

278. In replevin for goods wrongfully attached the fact that defendant in attaching

them was a wrong-doer in respect to some third person can form no basis for investigation or judgment: *Tandler v. Saunders*, 56 M. 142.

279. In replevin against a constable for property taken by him on an attachment against a third person, it was *held* no error to exclude a defence based upon contract rights in the attaching plaintiff, so long as the contract gave possession to another, and it did not fairly appear that the constable was instructed to hold on the footing of such rights, and no such rights were asserted in answer to the demand preceding replevin: *Town v. Tabor*, 34 M. 262.

280. A sheriff in possession under a fraudulent levy may, when the goods are replevied from him by a purchaser from the execution debtor, show in defence that the sale by such debtor was fraudulent as against his creditors: *Pierce v. Hill*, 35 M. 194.

281. An assignee replevying from a constable who had levied under an execution against the assignor may be cross-questioned as to his pecuniary responsibility where the purpose is to show that the assignment was a fraud: *Jennings v. Prentice*, 89 M. 421.

282. Where a defendant, in an action of replevin, rests his claim to the property upon a seizure as constable by virtue of an execution, he must, before proving the execution, show a valid judgment upon which it issued; and he will fail to establish any right to the property by virtue of the levy if it appears that the judgment was void or had been paid before the issuing of the execution: *Beach v. Botaford*, 1 D. 199; *Gidday v. Witherspoon*, 35 M. 368.

283. In replevin against a constable claiming under a levy of execution, the defendant can recover the amount of his lien only on proof of a valid judgment and execution; proof of an execution alone, even though valid on its face, is not enough: *Andrews v. Smith*, 41 M. 683.

284. A purchaser of goods replevied them from a constable, who justified under an execution against the vendor, but it was found that the judgment supporting the execution was invalid. *Held*, that there was no basis for a showing that the sale to plaintiff was fraudulent: *Wilson v. Martin*, 44 M. 509.

285. Where the defendant in replevin is an officer holding the property under an execution against the plaintiff that is regular on its face, the plaintiff can show that the judgment upon which the execution issued was void for want of jurisdiction: *Adams v. Hubbard*, 80 M. 104.

286. In replevin for goods seized under an execution defendants need not prove the judgment if plaintiff, for the purpose of claiming exemption rights against the levy, has introduced the execution in which the judgment is described: *McGuire v. Galligan*, 53 M. 458.

287. Where defendant in replevin justifies under an execution, the record of the judgment and proceedings on which it is issued are admissible in evidence: *Gavigan v. Scott*, 51 M. 378.

288. In an action of replevin, parol evidence that at the time the goods were taken from the plaintiff he was served with an attachment against a third person and in favor of the defendants, without any proof of the process or proceedings in attachment, is insufficient to prove that the goods were in the custody of the law when the replevin suit was brought: *Van Baalen v. Dean*, 27 M. 104.

289. Parol testimony that the property in question had been taken on an execution may be given, not to show the contents or validity of the execution, but to identify the transaction: *Hunt v. Strev*, 83 M. 85.

290. Under H. S. § 8842, which requires the judgment in replevin to accord with the respective rights and interests which the parties have in the property, the exact extent of the subsisting claim of one who sues as a mortgagee is a legitimate subject of inquiry: *Kohl v. Lynn*, 84 M. 360.

291. In replevin against a constable for goods levied on, the question whether defendant was indemnified in making levy; and also by whom, is irrelevant: *Jennings v. Prentice*, 39 M. 421.

292. If a mortgagee of chattels seizes them without having previously brought a personal action upon the debt secured, and replevin is brought to recover them, the plaintiff in replevin can show how much has been paid upon the debt: *Gardner v. Matteson*, 88 M. 200.

293. An attachment was levied upon chattels sold by an insolvent debtor and the purchaser brought replevin therefor against the sheriff. *Held*, that the judgment in the attachment suit was admissible in a suit in replevin to show the extent of defendant's lien, in order that his special interest might be assessed if he recovered judgment: *Berger v. Clippert*, 53 M. 468.

294. A judgment creditor who became execution purchaser acquired thereafter a chattel mortgage made by the debtor. *Held*, that in replevin by the debtor the defendant had a right to show the existence of the mortgage as reducing plaintiff's interest; and, if the mortgage gave the right of possession, as af-

fecting also his claim of damage from being deprived of the property: *McGuire v. Galligan*, 53 M. 458.

295. Where replevin against an officer who had taken the property under an attachment was brought by a person to whom a bill of sale had been given as security but not put on file, it was *held* proper for defendant to show that part of the debts on which the attachment issued accrued after the bill was given and in reliance upon the vendor's continued possession and apparent ownership: *Talcott v. Crippen*, 52 M. 633.

296. In an action of replevin for logs, as to the quantity whereof a witness testifies, the quantity he has made in scaling other lands of which plaintiff has the actual scale may be shown to test his accuracy: *Busch v. Nester*, 70 M. 525.

297. In replevin brought by a legatee against the executor for a specific bequest, testimony from the legatee tending to show that the property claimed had been promised to the legatee before the testator's death, but not as a gift *in presenti* or *causa mortis*, is inadmissible: *Eberstein v. Camp*, 87 M. 176.

298. In replevin for goods bought by some of the defendants from plaintiff to satisfy the purchasers' debt to another defendant with whom they had gone into partnership, the dealings of the firm in regard to partnership matters, after the goods were replevied, were immaterial in the absence of any charge of fraud: *Cass v. Gunnison*, 58 M. 108.

299. In replevin for horses levied upon as the property of the husband of one of the plaintiffs, evidence touching the husband's management of the farm and horses, and the number of notes plaintiffs had in bank when they got the money from the bank to pay for the horses, is immaterial: *Gould v. Sanders*, 69 M. 5.

300. Neither the constitutionality of a statute authorizing an inspector to seize and condemn meat in the public market, nor the justification of such a seizure, can be considered in an action of replevin brought by the owner of meat that has been taken by an inspector, if there is no evidence of inspection and condemnation beyond the fact that a person, known to the owner as the inspector, marked the meat and took it away: *Kamman v. Lane*, 55 M. 426.

301. In replevin for impounded cattle where defendant justifies under a seizure for going at large in the highway, the question of the efficiency of the control over the cattle is immaterial, so long as defendant admits that he is unable to show that the particular cattle

were in the highway or upon his land when seized: *Blanck v. Hirth*, 56 M. 330.

302. In replevin for a horse it was held not error to allow the plaintiff to be questioned as to what he had done with the horse after replevying it, defendant not being jeopardized by this ruling: *English v. Caldwell*, 30 M. 382.

And see EVIDENCE, § 891.

303. The appraisal made under the writ is *prima facie* evidence of the value of the property where there is no other evidence upon the point: *Walrath v. Campbell*, 28 M. 111.

304. The appraisal may be received as evidence of value as against the plaintiff, though such evidence is not very conclusive: *Hunt v. Strew*, 33 M. 85. And to be evidence of value it must be offered in evidence: *Williams v. Bresnahan*, 66 M. 684.

And as to miscellaneous matters of evidence in replevin, see EVIDENCE, §§ 85, 87, 88, 280, 334, 342, 343, 423, 428, 485, 486, 489, 1094.

XIII. INSTRUCTIONS; VERDICT; FINDINGS.

305. Where the record showed that the defendants in replevin asserted a right of property and possession adverse to the plaintiff and inconsistent with his claim, and nothing of a contrary tendency appeared, it was held that a charge to the jury that the detention was not disputed was not error: *Johnson v. Moore*, 28 M. 3.

306. Defendant in replevin claimed to have bought the disputed property, and gave evidence tending to show that plaintiff had admitted his ownership to a third person. Plaintiff claimed to have lent the property to defendant, and denied selling it. Held proper to instruct the jury to consider the statements as to ownership, and the denial of the same, and to determine the ownership from all the testimony: *McDonald v. McDonald*, 55 M. 155.

307. In a suit against the sheriff for the conversion of an article seized under a writ of replevin, the special verdict rendered in the replevin suit, that the defendant was not in possession when the article was demanded or suit was brought, was introduced in evidence. Held, that it would not warrant an instruction that the right of the plaintiff in replevin had been adversely decided by it, and that evidence to the contrary need not be considered: *Sexton v. McDowd*, 38 M. 148.

308. Where defendants in replevin set up that the property was held under levies in favor of specified parties, and parol evidence was given, without objection, of one of the levies, with testimony tending to show that

one of the firm in whose favor it was made was spoken to on the subject and refused to release the levy, it was error, while directing a verdict against the officer who took the property, to charge that in the absence of documentary evidence the firm could not be held, as there was enough to go to the jury on this question: *Grindrod v. Lauzon*, 47 M. 584.

309. If the defendant in replevin shows a lien under an execution, and himself entitled to damages to the extent it exists, still, that extent, the validity of the lien and the amount of damages are questions for the jury, and the court cannot direct a verdict: *O'Connor v. Giddy*, 63 M. 680.

310. A jury answering special questions in a replevin suit stated that the property was not held by defendant when the affidavit was made and that he was then connected with the detention or possession. Held, that these special findings are not necessarily inconsistent with a general verdict for the plaintiff: it is presumable that the jury meant defendant did not hold the property personally: *Foster v. Gaffield*, 34 M. 356.

311. A special finding involving the conclusion that a certain person is holding chattels under an unexpired lease is inconsistent with a general verdict for the lessor in an action of replevin brought by him against an officer who has levied on the chattels under an execution against the lessee, as it negatives the plaintiff's possessory right: *Nottingham v. Vincent*, 50 M. 461.

312. Where the general title is in plaintiff a verdict for defendant must specify the amount of his interest if he only claims a lien upon the property or a special interest in it (H. S. § 8842): *Farmers' L. & T. Co. v. St. Clair*, 34 M. 518.

313. In replevin between claimants of property under rival mortgages the verdict and judgment should specify the amount of the lien of the successful party: *Williams v. Bresnahan*, 66 M. 684.

314. H. S. § 8842 requires a specific finding, in replevin, of any lien or special property claimed. Held, that if not found the judgment cannot recognize it; much less if the evidence would not support such finding: *Giddy v. Witherspoon*, 35 M. 368.

315. In replevin against a constable for goods levied on, a finding merely that plaintiff was the general owner and that defendant had a lien to the amount of his levy cannot be sustained where the interests of the parties are conflicting; as where the defendant levies on plaintiff's goods to satisfy an execution

against a stranger. H. S. § 8342 contemplates a special and full finding or verdict to authorize judgment for a lien: *Alderman v. Manchester*, 49 M. 48.

XIV. DAMAGES.

(a) *What recoverable.*

316. Plaintiff may recover damages for such property even as he has refused to take possession of when pointed out by defendant as a portion of that sued for, whether such refusal is before or after the service of the writ: *McBrian v. Morrison*, 55 M. 351.

317. If a plaintiff in replevin who recovers his property does not claim or does not have assessed his damages for the detention, it is a waiver of such damages equivalent to a satisfaction: *Delevan v. Bates*, 1 M. 97.

318. Where in the court below there was no evidence submitted as to the value of the property replevied, an award of more than nominal damages was held erroneous: *Phenix v. Clark*, 2 M. 327.

319. A plaintiff in replevin cannot complain that the court awarded nominal damages to him when the jury gave none; the error, if any, being in his favor: *Sleight v. Henning*, 12 M. 371.

320. The plaintiff cannot recover as a part of his damages the value of the services of his attorney and counsel in attending the suit: *Hatch v. Hart*, 2 M. 289.

321. The damages in replevin where the property is recovered must be limited to a fair compensation for the use of the property, together with such special damages as necessarily accompanied the detention, and any actual injury to the property. Speculative or contingent profits cannot enter into the computation: *Aber v. Bratton*, 60 M. 357.

322. Where the original detention of goods was unlawful, a subsequent delivery in good faith does not prevent a recovery of damages for the detention before such delivery: *Hanselman v. Kegel*, 60 M. 540.

323. In replevin for tools of one's trade taken on execution, the jury should be confined in estimating damages to the amount exempted by law and to the period during which plaintiff was deprived of his property; and if they give damages for lost profits interest cannot also be allowed: *McGuire v. Galligan*, 53 M. 453.

324. When the goods are not taken upon the writ of replevin, and plaintiff elects to take judgment for the value, the measure of

damages is the value of the property at the date of the conversion, and interest thereon to date of verdict: *Hanselman v. Kegel*, 60 M. 540.

325. The measure of damages in replevin, where the property is not found or taken and plaintiff proceeds for the value, is the value at the date of the unlawful taking, with interest upon such value: *Just v. Porter*, 64 M. 565.

326. Whether damages are allowable in replevin for detention of the property after the writ issues and before the property is found and taken on the writ, *quere*: *English v. Caldwell*, 30 M. 362.

327. A defendant who waives return may elect to take judgment for the value at the time of the taking under the writ with interest up to the date of the verdict, but he cannot also have damages for the detention or use: *Just v. Porter*, 64 M. 565.

328. Damages allowed the defendant may include the value of the use of the property while it is kept from him by means of the replevin proceeding: *Burt v. Burt*, 41 M. 82.

329. One who institutes an unfounded suit in replevin may incur damages against defendant, even though the latter does not own the property: *Ibid*.

330. A deputy-sheriff who has seized goods under an attachment has no right to make use of them while holding them; and therefore, when he prevails in an action of replevin against him, he has no right to damages for being deprived of their use: *Tandler v. Saunders*, 56 M. 142.

331. One who enters upon land under a tax-title void upon its face and cuts timber cannot claim to be acting in good faith, and when he fails in replevin for the logs against the owners of the land, they, on waiving return, are entitled to damages measured by the value of the logs at the time they were replevied, with interest from that date: *Nitz v. Bolton*, 71 M. — (July 11, '88).

332. Where property sold under an agreement that title should not pass until full payment of the price was, after part payment, unlawfully replevied by the vendor, the measure of the vendee's damages on waiver of return, the property having lost nothing in value, was held to be the sum of the vendee's payments with interest thereon from the time of replevy: *New Home Sewing Machine Co. v. Bothane*, 70 M. 443.

333. Under H. S. § 8342, where either of the parties at the commencement of the suit has only a lien upon or a special interest in

the goods replevied, he can only recover according to his special interest as against the general owner or one who has taken the goods by his direction; but as against a stranger the full value of the goods may be recovered, although exceeding the lien or special interest, and the plaintiff will be a trustee for the general owner as to the balance: *Davidson v. Gunzolly*, 1 M. 388.

334. Where a sheriff was sued in replevin for taking property on executions against a third person, but not from the possession of the plaintiff, and recovered judgment, it was not error to assess his damages, on a waiver of the return of the property, at the full value of the property, notwithstanding it exceeded the amount of the executions in his hands. The plaintiff had no right whatever to the property, and as between him and the sheriff the latter had the whole title, and would be bound to account for any surplus to the execution debtor. H. S. §§ 8342, 8347, providing for an assessment of the value of the special property only, does not apply here: *First Nat. Bank v. Crowley*, 24 M. 492.

335. Where a person setting up only a special property in chattels replevied waives a return and claims only pecuniary damages, his recovery cannot exceed the extent of his interest as shown. And when it appears that he has no interest, the award of damages for the value of the property is erroneous: *Weber v. Henry*, 16 M. 399.

336. A defendant in replevin whose lien under a chattel mortgage upon the goods replevied is sustained cannot recover beyond the value of the goods, which, if not proved, is governed by the appraisal made under the writ: *Walrath v. Campbell*, 28 M. 111.

337. In replevin against a sheriff for goods replevied by him at the instance of a third person claiming under a chattel mortgage, defendant, if he succeeds in the suit and waives a return of the goods, is not entitled to a judgment for their value, but only to the amount of his special interest therein: *Williams v. Bresnahan*, 66 M. 634.

338. Where mortgaged chattels are taken by the mortgagee in replevin, and the defendant, the mortgager, succeeds in the suit and waives return, he will be entitled to judgment only for such part of the value of the property as remains after deducting a sufficient sum to satisfy the amount remaining secured and unpaid upon the mortgage: *Fowler v. Hoffman*, 31 M. 215.

339. Where, after mortgaged goods attached by the mortgager's creditors have been replevied by the mortgagee, payments are

made on the mortgage debt, the mortgagee cannot enforce his lien on the goods or the value beyond the amount actually due him when the judgment is rendered: *Wood v. Weimar*, 104 U. S. 786.

340. An execution creditor and an officer who had levied the execution upon the mortgager's interest in mortgaged chattels were sued in replevin by the mortgagee, who, having obtained possession of the goods under the writ, sold them to the execution creditor under the power of sale in his mortgage. Held, that such sale, whatever the price paid, would not affect the measure of damages in the replevin suit under the statute regulating the judgment in case of separate interests. The sale did not convey the special property acquired by the levy, but only the separate interests represented by the mortgage: *Cary v. Hewitt*, 26 M. 228.

341. Where defendant in replevin has established a lien for sawing upon a quantity of lumber of which that replevied was only a portion, a ruling which permits the assessment of his damages at such a proportion of his whole lien as the lumber replevied bore to the whole quantity subject to the lien is not one of which plaintiff can complain, the error being in his favor: *Chadwick v. Broadwell*, 27 M. 6.

342. Where the proofs in replevin show clearly and without contradiction that the defendant, if in possession, is a possessor without any valuable interest in the property, but yet require judgment in his favor for want of a proper demand, he can recover no damages under H. S. §§ 8342, 8347, beyond his special interest, which would be merely nominal; a judgment for damages for the full value of the property is erroneous: *Darling v. Tegler*, 30 M. 54.

343. A sheriff is not damnified by proceedings against him in replevin for property in which he holds no special interest: *Lindner v. Brock*, 40 M. 618.

344. The damages against an unsuccessful plaintiff in replevin for distrained animals include all claims arising out of the distress and damage done defendant by the estrays: *Sterner v. Hodgson*, 63 M. 419.

345. Where defendant in replevin for impounded cattle does not dispute title but only claims a lien, he is not entitled, on failure of the replevin suit, to anything but costs: *Marx v. Woodruff*, 50 M. 361.

(b) Assessment.

346. A motion for an assessment of damages in a replevin suit, made the next term

after judgment in the case, was held too late; the parties being out of court: *People v. Jackson Circuit Judges*, 1 D. 802.

347. Where plaintiff recovered judgment before a justice, which was reversed by the circuit court on *certiorari*, and plaintiff in error afterwards moved for an order that a jury be impanelled to assess his damages, it was held that the circuit court, under the statutes of 1888, had no such power; but that under §§ 170 and 135 of the justices' act of 1841, it had power to award a restitution of the property: *Ibid*.

348. Under H. S. § 8347 a defendant who waives a return may have the value of the property assessed by the court without jury: *Pearsons v. Eaton*, 18 M. 79.

349. In replevin, when the property has been delivered to plaintiff and he receives a verdict, there is no authority given by the statute either to the court or jury to assess the value of the property replevied: *Merrill v. Butler*, 18 M. 294.

350. Where, on motion of the defendant in replevin, the writ has been quashed as void for not describing the property seized, the defendant cannot have an assessment of damages, which is confined by H. S. §§ 8346-47 to cases where "the property specified in the writ" has been delivered to the plaintiff, and can cover no other property: *Parsell v. Genesee Circuit Judge*, 39 M. 542.

351. H. S. § 8342 provides that in replevin the fact that either party has only a special property in the goods may be proved on the trial, or the assessment of value, or on the assessment of damages. Held, that this is meant to permit proof on the trial if a jury is had; or on assessment of value when demurrer is interposed; or on assessment of damages in case of judgment by default. But it does not authorize a second jury to be impanelled to assess damages after the case has been tried on its merits: *Quackenbush v. Henry*, 38 M. 369.

352. When judgment of discontinuance is rendered by the justice in a replevin suit, the defendant, if he waives a return of the property, is entitled of right to have his damages assessed, and if the justice refuses to assess them he may be compelled to do so by *mandamus*: *People v. Tripp*, 15 M. 518; *Forbes v. Washtenaw Circuit Judge*, 23 M. 497; *La Barr v. Osborn*, 38 M. 313; *Humphrey v. Bayn*, 45 M. 565; *Johnson v. Dick*, 69 M. 108 (March 2, '88).

353. When a plaintiff suffers a discontinuance, the defendant must elect whether he will claim or waive a return, and the election must be entered before proceeding to the

assessment of damages; of which assessment the notice required by the statute must be given: *Wheeler v. Wilkins*, 19 M. 78.

354. An assessment of value in replevin, and final judgment thereon, cannot accompany the allowance of a motion for judgment as in case of nonsuit, without any notice and hearing beyond that given for the motion: *Hill v. Webber*, 50 M. 142.

355. An assessment of value in replevin is authorized on the trial or on the assessment of damages (H. S. § 8346). Held, that this refers to the stage of the case at which damages are assessed, and not to the act of assessing them; and that defendant's omission to claim damages does not dispense with the necessity of assessing the value, or of the notice of assessment in any case in which he demands judgment for value: *Ibid*.

356. Where plaintiff in replevin, after appealing from a justice, discontinues on paying costs, defendant may waive return and elect to recover the value, and, without any interlocutory judgment, may notice the cause in the circuit court for an assessment of damages by a jury: *Soper v. Hawkins*, 56 M. 527.

357. Where judgment goes against one who brings replevin for distrained animals the damages may be assessed subsequently upon an inquest by jury: *Sterner v. Hodgson*, 63 M. 419.

358. Where a writ of replevin in justice's court is dismissed for defects in the affidavit, and defendant, waiving return, has an assessment for the value, he may appeal from the judgment thereon. On an assessment of damages in replevin there is always an issue between the parties, whether expressed in words or not: *Stall v. Diamond*, 37 M. 429.

XV. JUDGMENT.

(a) Upon what based; form.

359. It is the general nature of replevin that the state of things existing at the beginning of a suit will ordinarily control its determination: *Cary v. Hewitt*, 26 M. 228; *Cass v. Gunnison*, 58 M. 108.

360. Where, on a trial by the court without a jury, the court found the value to be \$120 and assessed the damages at six cents, an error by the clerk in entering judgment so as to recite the damages at \$120 instead of six cents was corrected by the finding and by the statute of jeofails: *Lyman v. Becannon*, 29 M. 466.

361. A joint judgment in replevin is proper where the possession of the defendants was

joint and they were connected in all the transactions on which it was based: *West Michigan Savings Bank v. Howard*, 52 M. 423.

362. Where, in replevin against two, the court finds that each of the defendants has an independent lien to a specified amount on the property in controversy, it is erroneous to render a joint judgment in their favor for the value of the property: *Sweetzer v. Mead*, 5 M. 107.

363. A judgment against the plaintiff in replevin for value cannot be entered in favor of several defendants jointly where some of them are not found to have been interested: *Steele v. Matteson*, 50 M. 318.

364. Joint judgment in money should not be entered in favor of defendants who have no joint interest in the property replevied; e. g., in favor of an assignee and one who claims title by purchase from him: *Redpath v. Brown*, 71 M. — (July 11, '88).

365. Judgment in replevin for return of the property is erroneous where plaintiff's action failed because it was in his possession when he sued out his writ: *Gidday v. Witherspoon*, 35 M. 368.

366. Judgment may be given for the return of property instead of for its value, if, when the verdict is rendered, no one is present for the party entitled to it, and no evidence of value is produced: *Kelso v. Saxton*, 40 M. 606.

367. Return need not be awarded in replevin where the property has been delivered under the writ to the plaintiff: *Smith v. Dodge*, 37 M. 354.

368. Where replevin is discontinued after the return day — as where the writ is set aside for defective service or where plaintiff on appeal voluntarily discontinues — defendant is entitled to judgment for return or for value and damages: *People v. Tripp*, 15 M. 518; *Forbes v. Washtenaw Circuit Judge*, 23 M. 497; *Humphrey v. Bayn*, 45 M. 565; *Soper v. Hawkins*, 56 M. 527.

369. The fact that the description given in the writ is an undivided interest which should not be made the subject of a replevin suit does not deprive the court of jurisdiction to render judgment for return or for value: *Humphrey v. Bayn*, 45 M. 565.

370. A conditional vendee, who by part payment has acquired an interest in the property, may, when his vendor fails in replevin, take judgment for the value of his interest: *New Home Sewing Machine Co. v. Bothane*, 70 M. 443.

371. It is essential to a judgment in favor of the defendant in replevin for the value of the property that the record should show

affirmatively and distinctly the election to take the value instead of a return of the property: *Adams v. Champion*, 31 M. 233.

372. Waiver of a return in an action of replevin is not, in practice, required to be made before trial or in writing, and no entry of it need be made beyond the proper recital in the judgment: *Kline v. Kline*, 49 M. 419.

373. A waiver of return in a justice's court, made in open court and entered by the justice at defendant's request, is sufficient to authorize a judgment for value instead of for a return: *Humphrey v. Bayn*, 45 M. 565.

374. Election to take judgment for value in replevin before a justice cannot be exercised, as matter of right, after an adjourned day on which the plaintiff discontinued and defendant did not appear: *Stack v. Smith*, 54 M. 238.

375. Where defendant in replevin has waived return he is entitled to a verdict for the value of such property in his possession as is claimed by the declaration, but as to the ownership of which there is no evidence: *White v. White*, 58 M. 546.

376. A finding in replevin that defendant did not unlawfully detain the property, that he had a lien on or special property in the same to an amount named, and that plaintiff was the general owner, subject to defendant's lien, authorizes a judgment in defendant's favor for the amount of the lien as found: *Moore v. Vrooman*, 32 M. 526.

377. Where a jury finds that defendant in replevin has a special lien, but does not find what the property is worth, there is nothing on which to base a personal judgment against the plaintiff for the amount of the lien: *Alderman v. Manchester*, 49 M. 48.

378. A finding in replevin that plaintiff has the general property, but that defendant did not unlawfully detain the goods, is contradictory, and cannot sustain a judgment in a case where it is impossible that a special property should co-exist with the general ownership: *Rodman v. Nathan*, 45 M. 607.

379. Replevin was brought contrary to the statute (H. S. § 8318) for property taken under a tax levy. Held proper, on quashing the writ, to give judgment for defendant for the amount of the tax lien: *Hill v. Wright*, 49 M. 229.

380. Where goods held by the sheriff under an attachment or execution are taken from him on writ of replevin, a judgment in his favor before the attachment proceedings are decided must be for the return of the property and not for the special value of his lien; and if the judgment has been erroneously entered, *mandamus* will lie upon a seasonable application

to change the journal entry thereof accordingly, unless such change will prejudice the rights of strangers: *Frederick v. Mecosta Circuit Judge*, 52 M. 539.

381. Where a plaintiff in replevin is general owner of the goods, but defendant has a special lien thereon under a levy made by him upon them, the plaintiff must necessarily hold the title levied on; but if he is not the general owner, defendant is entitled to a return; and there is no propriety in determining the amount of his lien unless he waives return and asks to have the value determined: *Alderman v. Manchester*, 49 M. 48.

382. Where a defendant in replevin sets up no right or claim to the property, but denies having been in possession when the writ was issued and served, and defends on that ground, and has verdict in his favor that he did not unlawfully detain, etc., he has no claim to a judgment for the return of the property or for its value, and is entitled to a judgment for costs only: *Hinchman v. Doak*, 48 M. 168.

(b) Conclusiveness and effect.

383. A judgment in replevin against an agent does not conclude his principal, even though the principal acted as the agent's attorney at the trial: *Warner v. Comstock*, 55 M. 615.

384. A judgment for defendant in replevin for exempt property taken by him on execution bars trover against him for its conversion unless after the return of the property and before its sale the claim of exemption is plainly made: *McGuire v. Galligan*, 57 M. 38.

385. Judgment for value in replevin is not final, but interlocutory, and only decides the right, while the ascertainment of the value is referred to a further inquiry by the court: *Hill v. Webber*, 50 M. 142.

386. A judgment in favor of defendant for a return is a solemn legal adjudication that he, not plaintiff, is entitled to the property; and it gives all legal remedies, not prohibited by statute, to obtain possession of the property or its value: *Smith v. Demarrais*, 39 M. 14.

387. Judgment for the return of goods replevied from a buyer by the seller restores to the buyer the possession of the goods without impairing the seller's rights under their contract of sale: *Adams v. Wood*, 51 M. 412.

388. A judgment for return in favor of defendant in replevin is not evidence of title to the property in question as against one not a party to the proceeding and who has possession of the property, but is not shown to have acquired such possession or to claim title un-

der either party: *Rathbun v. Ranney*, 14 M. 382.

389. Nor does such a judgment show general ownership as against any one: *Ibid*.

390. Although a judgment in replevin does not in itself decide anything more than the right of possession, yet it may be rendered conclusive by showing that the right of property was in fact tried and determined: *Lansing v. Sherman*, 30 M. 49. See EVIDENCE, § 242.

391. A judgment in replevin, where there is no assessment of damages, does not necessarily determine title, but merely determines the right of possession at the time, and is not inconsistent with the right of the defeated party to recover it back under a change of circumstances: *Deyoe v. Jamison*, 83 M. 94; *Pearl v. Garlock*, 61 M. 419.

392. A replevin suit in which the property is not taken on the writ and the plaintiff proceeds for damages determines the title to the property: *Parmalee v. Loomis*, 24 M. 242.

393. Where a judgment in replevin is rendered on a waiver of a return for the value of the property, all proper questions must be litigated on the assessment of damages, and are not afterwards open: *Pearl v. Garlock*, 61 M. 419. See *infra*, §§ 212-220.

394. It seems that a judgment in replevin cannot settle the title to land: *Busch v. Nester*, 62 M. 381, 70 M. 525.

395. A judgment in replevin against a vendee cannot be evidence of a breach of his vendor's warranty of title in the absence of any evidence that such judgment depended upon the state of the title at the time of the sale: *Moore v. Bostwick*, 23 M. 507.

396. A judgment in replevin against a vendee for the amount of a lien does not prove breach of warranty of title unless the vendors undertook to defend the suit or had proper notice to do so: *De Witt v. Prescott*, 51 M. 298. See *Axford v. Graham*, 57 M. 422.

397. A judgment in replevin was allowed to be shown in mitigation of damages in trespass for the detention of the property: *Briggs v. Milburn*, 40 M. 512.

XVI. EXECUTION.

398. Executions against the body cannot be issued on circuit court judgments in replevin: *Fuller v. Bowker*, 11 M. 204; *Tomlin v. Fisher*, 27 M. 524.

399. They may, however, issue on justices' judgments (H. S. § 6958): but appeal avoids them: *Tomlin v. Fisher*, 27 M. 524.

400. A writ of return upon the judgment

cannot be issued to the sheriff of any county except that upon which the judgment was rendered: *Rathbun v. Ranney*, 14 M. 382.

401. Where plaintiff in an action on a replevin bond puts in evidence a part only of the files in the replevin suit, defendant can introduce the rest in order to show that more executions have been issued on the judgment than have been made to appear: *Greenlee v. Lowing*, 85 M. 63.

RESIDENCE.

See DOMICILE.

See, also, this heading in the Index.

RES JUDICATA.

See JUDGMENTS, II, (d); EQUITY, XII, (c).

As to *stare decisis*, see COURTS, §§ 248-251; TREATIES, § 5.

RESTITUTION.

See ASSISTANCE, WRIT OF.

1. One in possession under a forged deed can claim no rights, and, notwithstanding improvements, ejectment need not be resorted to for possession after a decree against him; a writ of restitution is enough: *Crawford v. Hoeft*, 58 M. 1.

2. This writ in forcible entry cases must follow the judgment, and consequently the complaint, in describing the premises: *Clark v. Gage*, 19 M. 507.

3. A constable has authority under the statute of forcible entry and detainer to execute this writ: *People v. Gay*, 2 D. 867.

4. The writ, if served, may be proved in an action for rent based on the condition of the appeal bond, and if not served the proof is immaterial: *Hecht v. Ferris*, 45 M. 376.

REVENUE.

See TAXES.

1. Forfeitures under the revenue laws of the United States relate back to the time of the offence and defeat any title subsequently acquired: *Dean v. Chapin*, 22 M. 275.

As to liability of public officers for public moneys, see OFFICERS, §§ 94-106.

REWARD.

1. A bank had a claim against an individual who purported to have conveyed away certain property by a deed dated in 1872. An at-

torney who had discovered certain facts while prosecuting a claim against the same person agreed with the bank for \$100 to put it in possession of evidence or information which would enable it to collect its claim, and then showed facts indicating that the deed was fictitious. There was evidence tending to show that, by means of his knowledge, the bank obtained payment of its claim through proceedings against the property conveyed. *Held*, in an action for the reward, (1) that defendant's claim that furnishing the means of getting proof was not furnishing evidence was unreasonable; (2) that the information was of a kind that in the nature of things could not be shown by documents alone; and (3) that it was for the jury to determine how far it was unknown, and whether the evidence established the plaintiff's demand: *Huckins v. Second National Bank*, 47 M. 92.

Rewards for apprehending criminals, see CITIES AND VILLAGES, § 45; COUNTIES, §§ 49, 65.

For finding lost goods, see that title, §§ 4, 6, 7.

ROADS.

See HIGHWAYS.

Contracts relating to construction of, see CONTRACTS, §§ 236, 263-266.

ROBBERY.

See CRIMES, III, (a), 8; EVIDENCE, §§ 885, 886, 625, 2174.

SALES.

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- (b) *When title passes.*
- (c) *Delivery.*
- (d) *Acceptance.*

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- (b) *Rescission.*
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- (e) *Vendor's lien.*
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 - 1. When lies; defences.
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V. CONDITIONAL SALES.

VI. SALES ON TEST OR APPROVAL.

VII. BONA FIDE PURCHASERS.

VIII. BILLS OF SALE.

As to sales of land, see VENDORS.

Requirements of STATUTE OF FRAUDS, see that title.

That sales made on Sunday are void, see CONTRACTS, §§ 250-254.

Validity of sales of liquors, see INTOXICATING LIQUORS, IV.

I. WHAT CONSTITUTES; NATURE AND EFFECT.

(a) *In general; the contract.*

1. A sale is a transmutation of property from one person to another for a consideration: *People v. Auditor-General*, 7 M. 84.

2. A sale is a parting with one's interest in a thing for a valuable consideration: *Western Mass. Ins. Co. v. Riker*, 10 M. 279.

3. Where property is taken at a fixed money price the transaction is a sale, whether the price is paid in money or in goods: *Picard v. McCormick*, 11 M. 68.

4. Every transfer of property for an equivalent is substantially a sale; money's worth is a valuable consideration as much as money itself: *Huff v. Hall*, 56 M. 456.

5. The sale of a chattel, where the consideration is actually paid, is valid without actual delivery, or even if the chattel at the time is lost or withheld from the vendor by a wrongdoer: *Davis v. Ransom*, 4 M. 238.

And see CONTRACTS, § 260.

As to validity of agreements for sale for future delivery, see CONTRACTS, §§ 280, 281, 283, 284, 287.

6. Mere knowledge on a vendor's part at the time of the sale that his vendee intends to use the property for an illegal purpose does not make the sale illegal so as to prevent the vendor's recovering the value: *Webber v. Donnelly*, 83 M. 469.

7. An arrangement with a miller to deliver wheat to be paid for on delivery or at any subsequent time when payment shall be de-

manded, and with an understanding that the miller may use it in his milling business, is a sale absolute if no right is reserved to recall or return it: *Jones v. Kemp*, 49 M. 9.

That the deposit of grain in an elevator constitutes a bailment and not a sale, see BAILMENT, §§ 1, 2.

8. A., desiring a loan from B., offered to mortgage his rig, but B. would not take a mortgage because of the trouble to record it. He agreed, however, to buy the rig for \$25, on the understanding that A. might buy it back at the end of a month for \$27, keeping and using it meanwhile. The rig was in fact left for seven months in A.'s possession, and during that time A. mortgaged it to C., who took it on his mortgage. *Held*, that the transaction with B. was not a sale, but a mere agreement for securing a loan, and that B. could not bring trover against C.: *Berry v. Monroe*, 57 M. 187.

9. The owner of a span of horses asked W. to bring them from Canada. Instead of doing so W. traded them for another span, and on his return told H. he had sold them, concealing the fact of the trade, and said he had a span that would suit him, which he subsequently pointed out to him. *Held*, that this was not evidence of a title to the second span: *Houghton v. Ross*, 54 M. 335.

10. A quantity of mowers and reapers were delivered by the manufacturers under a contract which left it uncertain whether they were sold to the recipient or whether he was merely made an agent for their sale to others. He was under no restriction as to selling them, but if in payment to the manufacturers he turned over any notes received by him, the contract required him to indorse them himself, and such notes were also to contain a "property statement," and be payable at certain dates. *Held*, that this was consistent with a sale of the machines to the recipient, and that a further provision that the proceeds of his own sales, whether in notes, cash or accounts, should be the manufacturers' property, and held in trust for them, was not necessarily inconsistent with it, as it only contemplated that such proceeds should be treated as security: *Adriance v. Rutherford*, 57 M. 170.

11. Where defendant gave plaintiff his check for \$800 for a watch worth \$15, the whole transaction being mere pleasantry, neither party contemplating a sale, *held*, that no recovery could be had on the check though defendant did not offer to return the watch until the trial: *Keller v. Holderman*, 11 M. 248.

12. In order to make a valid and complete

contract of sale the parties' minds must meet on all essential requirements: *Warner v. Feige*, 65 M. 93.

13. And there is no bargain unless in some form the minds of the parties are brought into a state of concurrence in favor of the specific arrangement or transfer, even though the decision in the mind of a party to buy is settled: *Peck v. Detroit Novelty Works*, 29 M. 313.

14. A board of directors adopted a resolution that the corporation buy of an individual whatever stock he held at what it had cost him, but not fixing the price or the time or manner of payment. He tendered his stock, and demanded what he claimed it had cost him. *Held*, that he could not recover as upon a completed sale: *Ibid*.

15. A., who was operating a mine on royalty, offered to sell to B. a large pile of ore at 25 cents a ton and half of the net proceeds as soon as he could learn what royalty he would have to pay. B. was allowed to load a number of cars with the ore, but was informed that he could have no more on the terms stated, as it had been ascertained that the ore was worth more than first estimates. *Held*, that there was no sale, there being no fixed price or time of payment or delivery: *Foster v. Lumbermen's Mining Co.*, 68 M. 188 (Jan. 12, '88).

As to acceptance and revocation of offers to sell, see CONTRACTS, §§ 54-73.

16. After shipping goods orally ordered the vendor received this telegram from the vendee: "Cancel order. Will explain by mail." The vendor replied: "Goods were shipped on 21st. Receive, and wait further orders." The vendee received the goods and put them in his stock, and no other communication passed until he had sold them. *Held*, a completed sale: *Sullivan v. Sullivan*, 70 M. 588.

17. An arrangement between father and son for an immediate and actual transfer of personal property by the former to the possession and control of the latter, in consideration of his undertaking to support and provide for his parents, will warrant the son, if he has performed on his part, in detaining and claiming title to the property upon his father's death, and as against the administrator; and in a controversy over the title between such son and administrator, there being evidence tending to establish such an agreement and performance, it is *held* error to put the case to the jury as one involving a promise of a testamentary gift instead of a present sale: *Chambers v. Hill*, 84 M. 528.

18. A lumberman turned over a quantity

of logs to a banker, who took them for a firm, giving the firm's paper to the lumberman in payment, but himself keeping the title to the logs until the notes should be met, and the lumberman having the right to deposit the notes with the banker and draw against them. *Held*, that the transaction would warrant a finding that it was a sale from the lumberman to the banker: *Davis v. Maltz*, 57 M. 496.

19. By contract A. was to take and receive from B. all of certain lumber B.'s mill should get out up to Oct. 15, 1864, at a certain price per thousand feet, the lumber to be delivered at a certain pier. A. was to pay B. \$500 Feb. 1, 1864, on logs already purchased by B., said amount to be secured by logs and placed in A.'s name on B.'s books, and thereafter all logs to be bought in A.'s name, A. to pay on them \$500 March 1 and \$500 March 15; the balance of payments to be made on delivery of said lumber in drafts payable at 30 and 60 days' sight in Chicago; and if the measurement of said lumber should overrun the scale, the difference was to belong to A., and all lumber remaining unshipped after Oct. 15 was to be paid for at that time in drafts as above mentioned. Under said agreement a large number of logs were got out, and placed in A.'s name on B.'s books, and sawed by B., and a portion of the lumber delivered. In replevin by A. for part of this lumber, *held*, that the intent was to place the logs to be purchased, as well as those already purchased, in A.'s name as security only; that the object of the security was not only to secure any advantages that might be made, but the performance of the entire contract on B.'s part; and that B. was bound to deliver the lumber on a proper demand, it not appearing that A. refused to pay according to the contract: *Phillips v. Raymond*, 17 M. 287.

20. An agreement to sell certain stock, including fifteen of the vendor's "best pigs and such two sows as they belong to," means the best two litters aggregating fifteen: *Howard v. Bellows*, 49 M. 620.

21. A contract for a specified quantity, *more or less*, is valid where the parties understand that a reasonable deviation from the amount stated shall not defeat the contract. *Held*, that 473,000 feet of lumber was enough to satisfy a call for 500,000, *more or less*, especially where the purchaser took away part of the mass and paid for what he removed: *Holland v. Rea*, 48 M. 218.

22. A contract purported to sell "all the brick now situated and being in a certain kiln . . . to the amount of 530,000." Five hundred thousand were delivered and paid for.

The provisions in the contract for freight and payment tended to show that the parties did not contemplate a sale of more than 500,000, and this was confirmed by a written undertaking, signed by defendant, "to load 420,000 brick on the balance of 500,000 not shipped." *Held*, that the contract passed only 500,000: *Brown v. Starret*, 67 M. 577.

23. A contract for the sale of "timber now lying in Van Etten lake" gave "the privilege of increasing the amount," and provided that "all timber hereafter cut is to scale 12 inches and upwards." *Held*, that this final clause did not cover the timber in the lake: *McKay v. Evans*, 48 M. 597.

24. Where timber was contracted for, to average not less than seventy feet to the stick, and a subsequent agreement was made to take more timber on the same terms, the purchaser was entitled to have the whole lot average seventy feet to the stick, and to damages for any deficiency in that average: *Merick v. McNally*, 26 M. 874.

25. And where the agreement was to furnish timber suitable for a particular market, the standard of measurement customarily used for that market is contemplated: *Ibid*.

See CONTRACTS, §§ 352-355, 363.

26. A contract was made for timber to be delivered on the cars at P., subject to the inspection of the railway company's inspector. *Held*, that the contract contemplated such inspection as was customary: *McLennan v. McDermid*, 50 M. 379.

27. By the contract of purchase of goods the price was to be regulated by the price of gold, but no advance or reduction of 25 per cent. in the price of gold was to change the price of the goods unless it should remain at the advanced or reduced rate sufficiently long to affect the general price of merchandise. *Held*, that such qualification was not applicable where the change in the price of gold had greatly exceeded 25 per cent.: *Ames v. Quimby*, 96 U. S. 324.

As to locality of contract of sale, see CONFLICT OF LAWS, §§ 21-30.

(b) *When title passes.*

28. At the common law a contract for the sale of goods, where nothing remained to be done by the seller before making delivery, transfers the right of property, though the price has not been paid nor the thing sold delivered to the purchaser: *Kling v. Fries*, 33 M. 275.

29. Where no question arises under the statute of frauds and the rights of creditors do

not intervene, the question whether a sale is completed or only executory must usually be determined from the intent of the parties as ascertained from their contract, the situation of the thing sold, and the circumstances surrounding the sale: *Lingham v. Eggleston*, 27 M. 324.

30. The question whether a contract of sale operates as an immediate transfer of title is to be determined by the intent of the parties as gathered from the contract: *Brewer v. Michigan Salt Assoc.*, 47 M. 526.

31. Defendant sent wheat by railroad from Hudson to Toledo, consigning part of it to H. & Co. and part to F. On its arrival at Toledo the wheat was mingled with other like grain in the railroad elevator. The receipts given for the wheat made it deliverable to the consignees or order. Defendant then made sale of the wheat to plaintiff, and received payment for the same, and gave him an order on F. for its delivery. Before plaintiff found F., or obtained delivery of the wheat, it was destroyed by the burning of the elevator. *Held*: 1. That the legal control of the wheat was in the consignees, through whose co-operation alone the title could be vested in the plaintiff. 2. That the order upon F. was an undertaking on the part of defendant that F. would complete the sale by delivery of the wheat; and that he was liable to the plaintiff for a breach of that undertaking: *Perkins v. Dacon*, 13 M. 81.

32. T. agreed orally to sell P. certain logs on the skidways, to be there scaled by C., and to be paid for in indorsed paper unless cash was paid. At P.'s request F. was to be allowed to assist C. in scaling, and the scale was made and agreed on as figured by F. The logs were scaled May 7, 1887, and between that and May 12 P. bargained them to B., who was to have them as delivered on the cars. During the interval M., on T.'s behalf, applied to P. for pay, and P. requested him to procure written authority; but before this was obtained the logs were burned. In suit by T. against P. for agreed price, *held* it was for the jury to say whether there had been a completed sale so as to pass title to P.: *Toohy v. Plummer*, 65 M. 688, 69 M. 345 (April 13, '88).

33. Goods were consigned by a vendor in excess of his order, and were received by the vendee, who held the excess subject to the consignor's order, advancing the freight charges and notifying the consignor. *Held* that, on the destruction of the excess by fire, without the consignee's fault, he was not liable for their value; that he could recover

the freight advanced, and that it was immaterial, the goods being of the same quality, from what cars, whether earlier or later, he took the quantity necessary to fill his order: *Larkin v. Mitchell & R. L. Co.*, 42 M. 296.

34. Goods were forwarded for acceptance if satisfactory, but acceptance and payment was unreasonably delayed and the consignee meanwhile assigned. *Held*, that title had not passed and the goods were not covered by the assignment: *Shipman v. Graves*, 41 M. 675.

35. Under a contract for the sale of lumber, to be delivered "when ready to ship, or when vessel is ready to send for it," it was *held* that, when nothing remains to be done by the vendor except to deliver it, and everything depends upon the action and convenience of the vendee, the title passes and vests in the vendee, so that upon the destruction of the lumber by fire, without the vendor's fault, neglect or carelessness, the vendor is entitled to recover the purchase price: *Whitcomb v. Whitney*, 24 M. 486.

✓ 36. A. agreed, in the month of August, to buy from B. all the lumber to be cut from a certain lot of logs, A. to pay the cost of freighting said logs to mill on the railroad the first of each month, as the logs should be delivered to the mill, he also to pay the saw-bill as the lumber should be sawed and delivered on the dock at Tawas, Mich., and the remaining balance of said purchase at ninety days from date of shipment of the lumber; and the lumber was to be shipped within thirty days after it should be sawed and piled. *Held*, (1) that the title passed with the piling on the dock; (2) that the time of shipment should be left to the jury to ascertain from all the facts and circumstances what was the intent of the parties: *Jenkinson v. Monroe*, 61 M. 454.

37. Title by sale never passes absolutely and for all purposes on delivery without payment, except in sales on credit: *Lentz v. Flint & P. M. R. Co.*, 53 M. 444.

38. L. bargained for hogs at a price of which he paid part down, and was to pay the rest on delivery at the shipping place, where they were to be weighed. He contracted to sell the whole to M. at a specified price per pound, receiving part payment down and the rest when the weight should be ascertained and delivery made to him. If M. did not pay then in full the payment down was to be forfeited. On the day fixed for delivery M. was not ready to pay, and next day S. sold the hogs to B. *Held*, that M. could not, upon tender of payment, maintain trover against S. and B., nor any other action based on his own-

ership of the hogs, for he never had title: *McDonough v. Sutton*, 85 M. 1.

39. An understanding that title to personalty should pass before full payment is made for it may be implied from circumstances: *Bonn v. Haire*, 40 M. 404.

40. The presumption that title does not pass upon a sale so long as anything remains to be done to determine the sum to be paid is not conclusive, but may be overcome by such facts and circumstances as indicate a contrary intent in the parties, and the intent is a question of fact and not of law: *Byles v. Colier*, 54 M. 1.

41. Where the vendor of logs on delivering them to the vendee's agent put the vendee's mark thereon, an agreement that title should not pass before payment was *held* waived: *Hance v. Tittabawassee Boom Co.*, 70 M. 237 (May 11, '88).

42. The fact that there is no change in possession is not conclusive against a change of title: *Brewer v. Michigan Salt Assoc.*, 47 M. 526.

43. A corporation made a contract with manufacturers of salt, whereby it was to take all the salt manufactured by them, the salt to become its property as soon as inspected and branded, but the manufacturers to furnish storage for the salt and be responsible for it until delivery. *Held*, where a certain quantity belonging to a manufacturer, after being inspected and branded, and while it remained on his premises, was destroyed by fire, that the corporation had become the owner and must pay for it: *Ibid*.

44. Where parties contract to make a present sale with possession of an interest in a crop of wheat, payment thereof to be made at a future day in oats instead of money, and such possession is given as is possible in such a case, the title passes at once: *Crapo v. Seybold*, 36 M. 444.

45. Under a contract for the sale of personal property not within the statute of frauds, manual delivery of the article sold is not essential to the passing of the title, unless made so by the understanding of the parties, and their intention is the governing consideration in every case: *Whitcomb v. Whitney*, 24 M. 486.

46. Title may pass without delivery if the property sold is sufficiently identified, and even if something remains to be done to fit it for delivery: *Byles v. Colier*, 54 M. 1.

47. Sale of machinery to be affixed to the freehold, a part of the price being paid down and the balance secured by mortgage on the machinery, which, however, was not to be de-

livered until the owner of the realty should indorse upon the mortgage his recognition of the mortgagee's rights. *Held*, that the title passed at the time of the sale, and only the delivery was suspended until such recognition was indorsed: *Hicks's Case*, 20 M. 280.

48. Delivery of possession is enough to transfer title on the sale of personal property: *Adams v. Lee*, 31 M. 440.

49. Complete delivery is almost conclusive evidence that the property shall vest in the purchaser and be at his risk, notwithstanding that weighing, measuring, inspection, etc., is to be done afterwards: *Lingham v. Eggleston*, 27 M. 324.

50. Where there has been a complete delivery of the property in accordance with the terms of sale, the title passes, although something remains to be done in order to ascertain the total value of the goods at the rates specified in the contract: *Hatch v. Standard Oil Co.*, 100 U. S. 124.

51. While delivery is usually the most significant fact to prove the transfer of title, it is not conclusive, as there may be an express understanding to the contrary, and so likewise there may be an implied one: *Wilkinson v. Holiday*, 33 M. 886.

52. Delivery of symbolic possession is not in itself conclusive evidence of passage of title, and has not as significant a bearing upon the question whether a sale has been completed as the fact that the quantity and the amount to be paid have not been determined: *Hatch v. Fowler*, 28 M. 205.

53. Whether by the understanding of the parties the title to logs under contract of purchase was to pass with their delivery to the boom company, *held*, under the circumstances of the case, to be a question of fact for the jury: *Wilkinson v. Holiday*, 33 M. 886.

54. Under a contract of sale of logs in a boom, it being a sale of all the logs at fixed prices, and nothing remaining for the vendors to do—the amount to be ascertained by a boom-master whose duty it is to scale the logs—the title vests at once in the vendee: *Leonard v. Davis*, 1 Black (U. S.), 476.

55. Delivery is not always necessary to perfect a sale; but there must always be an identification of the thing sold, in some way, so that it may stand apart from other things with which it might be confounded, and there must be a present transfer of the entire property: *Perkins v. Dacon*, 13 M. 81.

56. Where, under a contract for the purchase of personalty, something remains to be done to identify the property, or put it in condition for delivery, or determine the sum to

be paid for it, the presumption is strong, but not conclusive, that by the understanding of the parties the title was not to pass until such act had been fully done; the question is only one of mutual intent: *Wilkinson v. Holiday*, 33 M. 886.

57. That a boom company's charges upon logs contracted to be sold were to be paid by the vendee raises a strong presumption that the logs were held for him and that the company was his bailee; but the fact that the logs were to be subsequently scaled in order to determine how much was due tends to rebut this presumption: *Ibid*.

58. A bargain was made for the sale of 200 cords of hard wood, to be taken out of the first six tiers, and as far as required out of the seventh tier of a pile of mixed wood, and to be removed by the purchaser and measured as taken, the soft wood being thrown out; *held* not to constitute a completed sale or to transfer the title to any specific portion of said wood so as to authorize the vendor to recover the purchase price upon its destruction by fire: *Hahn v. Fredericks*, 30 M. 223.

59. Under a contract for the sale of two hundred tons of No. 1 pig iron, to be thereafter delivered, the vendor manufacturing various grades of iron and producing large quantities daily, and piling all the iron as fast as made upon the dock in separate piles according to the several qualities as he chooses to determine them, it was *held* that in the absence of any inspection for or acceptance by the vendee, or of any mark upon any of the respective piles to identify them as belonging to the vendee or to distinguish them from any other of the same grade, the title to any specific portion does not pass to the vendee, and he cannot recover in an action of replevin against the sheriff for taking any portion thereof on a valid execution against the vendor: *First National Bank v. Crowley*, 24 M. 492.

60. If goods are unmistakably designated, neither delivery, deliverable condition, nor a determination as to the quantity or quality, when the price depends on either or both, is absolutely essential to the completeness of the sale; these circumstances bear on the intent, but are not conclusive: *Lingham v. Eggleston*, 27 M. 324.

61. A contract for the sale of specific ascertained goods vests the property immediately in the buyer and gives the seller a right to the price, unless it is shown that such was not the intention of the parties: *Hatch v. Standard Oil Co.*, 100 U. S. 124.

62. Under a contract for the sale of staves

to be manufactured, piled and counted, title passes to the vendee when those things are done: *Ibid.*

63. Where a debtor has turned out to a creditor in payment of the debt certain specified piles of lumber, which were designated and marked, and put into the charge of a person who accepted the duty for the vendee, though in the general employ of the vendor, the transaction amounts to a completed sale and transfer of the title, though the amount was to be ascertained by future measurement, and the purchase price to be determined by future inspection, the vendee paying any excess of the purchase price over his debt, and the vendor making good any deficiency: *Colwell v. Keystone Iron Co.*, 36 M. 51.

64. An executory agreement to sell a growing crop of wheat for one hundred bushels of oats is held not to have constituted a completed sale and transfer of title of the wheat, so long as the oats remained undelivered and mingled with other oats belonging to the purchaser of the wheat, under an arrangement that they should be stored by him for a time and be measured out and delivered in the future, or should be drawn to market and sold and the proceeds paid over to the vendor of the wheat: *Crapo v. Seybold*, 35 M. 169.

65. Under a contract to saw and sell lumber at stipulated prices according to quality, the sorting and inspection to be final when loaded in cars, it was held that title did not pass to lumber sawed and piled in the mill-yard and burned before inspection, and the vendee could not be liable in an action on the contract as for a refusal to accept: *Wagar v. Farrin*, 71 M. — (July 11, '88).

66. On a sale of ore from which that which is worthless has to be separated when it is loaded for delivery, title does not pass to the purchaser until then: *Foster v. Lumberman's Mining Co.*, 68 M. 188.

67. Where the vendees, by oral contract, bought \$3,000 worth of lumber, no class being designated in quantity, but the amount to be taken out of any of three grades as they might order, and to be loaded by the vendor — there being no designation, marking or setting out of the lumber — the title did not pass to any lumber until it was loaded: *Case v. Gunnison*, 68 M. 147.

68. Where a contract was made for the sale and delivery within a specified boom of a certain number of logs, measuring a certain number of feet by a scale agreed upon, and it afterward appeared that the enumeration and measurement were wrong and that the logs delivered exceeded those contracted for in

number, but fell short in cubic contents, it was held that the contract was not for a sale in bulk, but for a fixed number measuring a certain amount; that there being more than the number stated, these logs could not be identified until delivery in the boom, and that no title passed till delivery: *Ortman v. Green*, 26 M. 209.

69. Delivery of a greater quantity than was contracted for does not prevent title from passing to the vendee, if the vendor has received the consideration agreed on. All the vendor can claim is liberty to remove the excess without putting the vendee to inconvenience: *De Graff v. Byles*, 68 M. 25.

70. Where an amount of timber was identified and sold at a given price per foot, and put under the control of the purchaser, it was held that the sale was complete, measurement not being necessary in such case to pass title, and none but a constructive delivery being possible. Such a sale could not be revoked by subsequent notice: *Adams Mining Co. v. Senter*, 26 M. 78.

71. Where the price depends on the quantity or quality of the goods, whatever remains to be done by the vendor or by the mutual concurrence of both parties for determining it, as by weighing, testing or measuring, is presumptively a condition precedent to the transfer of the property: *Lingham v. Eggleston*, 27 M. 324.

72. Where money has been paid upon a sale of personalty that has been set apart for the purchaser by examination and estimate of its quantity, the fact that it must be further inspected in order to determine how much remains to be paid is not inconsistent with the purpose that the title should pass upon the partial payment: *Byles v. Collier*, 54 M. 1.

73. A contract for the sale of lumber provided that a balance of payment was to be adjusted "on basis of eight per cent. interest, after thirty days from date, on amount due either party hereto, when lumber is tallied or inspected. Said tally or inspection is to be made within thirty days from date by tallyman or inspector agreeable to both parties hereto, and each party standing one-half of the expense thereof; all other expenses from and after this date to be paid by the" purchaser. Held, that title passed by this memorandum of agreement; but, whether it did or not, the expense of storage until the lumber should be removed fell upon the purchaser: *Ducey Lumber Co. v. Lane*, 58 M. 521.

74. Whether a contract for sale of a cow at a certain price per pound passed title before or after the weighing was held to depend on

the intention of the parties and to be a question for the jury: *Sherwood v. Walker*, 66 M. 568.

75. Where goods sold have been identified and set apart for the vendee, who accepts a draft delivered to a third party for the price, the fact that they have not yet been received and weighed by the vendee and the quantity agreed upon or ascertained does not prevent the title's passing to him: *Sandler v. Bresnahan*, 53 M. 567.

76. The purchaser of goods replevied them from an officer who took them on an attachment against the vendor. The sale embraced transactions beginning Jan. 6th, and closing on the 9th or 10th. The levy was made June 10th. Under a charge that, unless the sale was made before the levy, defendant was entitled to a verdict, the jury found for plaintiff. *Held*, that it must be assumed that they found the sale to have been completed on the 9th, if such assumption were necessary to sustain the verdict. And if the case was so submitted that the jury might have found that the sale was completed on the 6th, although the facts were not sufficient to establish it, the verdict must stand if no instruction was asked for as to the effect of what took place that day; and if no exception was taken on the specific point, that the evidence was insufficient to show a complete sale at that time: *Id.*, 54 M. 343.

(c) *Delivery.*

As to measure of damages for failure to deliver as per agreement, see DAMAGES, §§ 83, 84, 89, 90, 188-205, 232-238, 241.

Delivery to take case out of STATUTE OF FRAUDS, see that title, IV, (c).

77. Where a contract for the sale and delivery of wool provides that the delivery is to be made upon notice from the purchaser, such notice is essential to a recovery: *Chadwick v. Butler*, 28 M. 349.

78. In an action for the price of wool sold which the vendee refused to accept and pay for, the vendee claimed that he was not liable because the wool had not been delivered within a reasonable time after notice was mailed directing the vendor to forward the wool. *Held*, that the vendor was not in default if he acted promptly after receipt of the notice: *Burhans v. Corey*, 17 M. 282.

79. If a contract to sell and deliver logs fixes no time for delivery, it is enough if they are delivered in a reasonable time: *McGraw v. Dole*, 63 M. 1.

80. Where a contract was made on July 20th to sell and deliver a crop of wool "in a

reasonable time, viz., within two weeks," a demand for delivery made on August 12th was held to be within a reasonable time: *Chadwick v. Butler*, 28 M. 349.

81. Where a contract was made for a harvester to be delivered ready for use by July 15th, and the vendor was to furnish a man to set it up and start it, it could not be considered delivered until set up; and no question of reasonable time would arise, especially if the machine was needed for immediate use: *Wood Mowing, etc. Machine Co. v. Gartner*, 68 M. 520.

Further as to reasonable time, see CONTRACTS, §§ 504, 505.

82. The question of delivery is one of fact, and is mainly governed by the intention of the parties. Where the evidence is equivocal it is properly a question of fact for the jury, under proper instructions, and must be submitted to them, unless it is plain, as matter of law, that the evidence will justify a finding but one way: *Gibbons v. Robinson*, 63 M. 146.

83. When an actual transmission of the thing itself by the seller to the buyer is impossible, constructive or symbolical delivery, producing as far as practicable the same effect, is allowed (*Per MARTIN*, Ch. J.): *Perkins v. Dacon*, 18 M. 81.

84. A symbolic delivery is sufficient to pass the title to logs floating in the water: *Leonard v. Davis*, 1 Black (U. S.), 476.

85. Vendor and purchaser can agree for future symbolical delivery, as by tender of warehouse receipts; and before the time for delivery the vendee can transfer his right to a third person, who would be entitled to possession at the time specified: *Gregory v. Wendell*, 39 M. 337.

86. In delivering grain to a purchaser on 'change it is sufficient to tender elevator receipts if it appears that the bearer could obtain the grain upon them: *Gregory v. Wendell*, 40 M. 432.

87. Where ore is piled at the point of delivery in a mass larger than was contracted for, and nothing remains but to take the contract quantity from the pile, it seems that it is a sufficient delivery: *Iron Cliffs Co. v. Buhl*, 42 M. 86.

88. A mining company agreed to sell two thousand tons of ore to an iron company and deliver it at a certain point whence it was to be taken by rail to the consignees. The contract quantity was delivered, and with more ore of the same kind was deposited in a pile at the point of delivery; but the consignees directed the railroad company to cease for-

warding it for a time, as they had no room for it. They paid in full for the contract quantity, however; but as they did not finally receive the full amount, they sued the railroad company for the amount which it had failed to deliver. *Held*, (1) that by these acts the iron company asserted their understanding that when the ore was delivered in the pile it was under their control; and (2) that they could not sue the mining company for the deficiency: *Ibid*.

89. Delivery of such property as a flock of sheep can only be made by surrendering possession with intent to transfer the title thereto, and by accepting it as owner: *Case v. Dewey*, 55 M. 116.

90. A contract for logs provided that the vendor should drive them to the main stream to be taken in charge by a booming company when its drive went down, and if too late should follow and overtake the drive. The vendor engaged another person, who was taking a large quantity of other logs, to meet the drive, to take these logs with them, but he missed the drive, and as he could not separate the logs and had engaged to take the other logs further he took these also, the vendor apparently acquiescing. When he reached his destination the main drive had not been overtaken, and as he was going no further the purchaser, without objection from the vendor, engaged the booming company to go back and collect the logs and run them to a designated place. *Held*, that the course of the parties to the contract of sale amounted to a delivery which cut off any lien the vendor might have had on the logs, and his right to stop them in transit: *Muskegon Booming Co. v. Underhill*, 43 M. 629.

91. Where a contract for the sale of a stock in a store specifies that the vendor excepts and reserves therefrom whatever the same may inventory above \$4,500, which excess he is to take from the stock, payment to be made in land and money as soon as the inventory is completed — the delivery of the goods and payment in the mode specified in the contract to be simultaneous — and the inventory shows an excess, there can be no delivery so as to pass title until the vendor takes out the goods excepted and reserved in excess of \$4,500: *Pierson v. Spaulding*, 67 M. 640.

92. Where, under an arrangement that the store should be kept open for trade while the inventory was making, and in contemplation that a sale would be consummated in accordance with the written agreement the vendee made purchases and assisted in selling goods from the stock, and did other acts in expectation that the purchase would be completed as

provided for in the contract, and no actual delivery or acceptance was alleged by plaintiff to have occurred until the 9th day of June, *held*, that testimony as to what the vendee said and did prior to the 9th day of June, and while the delivery was making, was not admissible for the purpose of showing delivery and acceptance upon the 9th: *Ibid*.

93. The counting out of shingles by purchasers, and the marking of a bunch on the top of each pile or two with their brand, is a complete delivery sufficient to pass the title where nothing remains to be done by either party except to load them upon the cars, as required by the contract: *Marthinson v. Wagner*, 63 M. 543.

94. A quantity of barrels were sold from a large stock stored in the warehouse of a bailee who was accustomed to deliver to purchasers upon presentation of a bill of sale. He was notified of the sale by both parties, and at the request of the purchaser, to whom a bill of sale had been given, he undertook to keep the barrels safely until called for. But they were not designated, nor separated from the rest, which were of the same size and quality. *Held*, that there was sufficient delivery to pass title, and protect the barrels sold from an execution levy against the vendors upon the general stock: *Carpenter v. Graham*, 42 M. 191.

95. Where machinery sold is in a building owned by the vendee's wife, and of which he holds the keys, all the possession that can be delivered is taken by him: *Edwards v. Edwards*, 54 M. 347.

96. A farm laborer orally agreed with his employer to take in payment a number of hogs which were pointed out, but which were to remain in the pasture and be fed by the employer, with others, until there should be an opportunity to sell them. *Held*, that there was sufficient delivery to transfer title as against a subsequent levy on the employer's property: *Webster v. Anderson*, 42 M. 554.

97. The evidence necessary to show a change in the possession of property transferred by an uncle to his nephews living together on the same premises would be different from that otherwise needed; and where there is uncertainty, it is for the jury to determine from the evidence whether the change was effected: *McLaughlin v. Lange*, 42 M. 81.

98. The possession of logs by a boom company for booming purposes is the possession of the owner, and not in contravention of any right of property, control or possession in him, but subordinate and subservient to his authority and purpose; such custody, therefore,

is no obstacle to such a change of possession or delivery to a purchaser or mortgagee as the nature of the property and its situation permits: *Sheldon v. Warner*, 26 M. 408.

99. Possession of goods by a warehouseman or other agent or bailee of the vendor or mortgager is not that of a third person so as to dispense with the necessity of delivery and of an actual change of possession, unless notice is given to him of the change of title. After such notice he ceases to hold as the vendor's agent, and, if he still retains possession, he becomes the vendee's agent: *Buhl Iron Works v. Teuton*, 67 M. 623.

As to the change of possession required where bulky or heavy property is mortgaged or sold as security, see CHATTEL MORTGAGES, §§ 59, 60.

(d) *Acceptance.*

See STATUTE OF FRAUDS, IV, (c).

100. A contract for delivery of timber "on the rail" of a vessel does not, in the absence of express provision, contemplate that it shall be inspected for acceptance at any later stage: *Brownlee v. Bolton*, 44 M. 218.

101. If one who contracts for goods to be delivered at a given time receives them as the goods bargained for, without objection, though not delivered until long afterwards, he is liable for the contract price: *Peter v. Thickstun*, 51 M. 590.

102. The act of a contract purchaser in receiving without protest what is delivered under the contract to the amount bargained for, amounts to a waiver of any difference in quality between what he had a right to demand and what he has actually received: *Comstock v. Sanger*, 51 M. 497.

103. If a vendee accepts and pays for blocks delivered to him under contract without rejecting any, though complaining of their defects, he waives any particular time and condition for such delivery; nor can he reject sound blocks thereafter delivered: *McFadden v. Wetherbee*, 63 M. 390.

104. A purchaser under a contract for the delivery from time to time of a certain number of logs measuring in the aggregate a given number of feet does not waive his objection to the failure to furnish logs of a proper average size by receiving such as are furnished below it; because he cannot assume that the deficiency will not be made up by the logs not yet delivered: *Ortman v. Green*, 26 M. 209.

Acceptance of goods as fulfilling warranty, see *supra*, §§ 162-165. See, also, as to acceptance, *supra*, §§ 232, 233.

II. FRAUD AND MISTAKE.

Sales fraudulent as to creditors, see FRAUD, II.

As to rescission, see *infra*, IV, (b).

(a) *In general.*

105. A purchase made by one who is insolvent, and with the purpose not to pay, is void even though the buyer has not made false representations: *Shipman v. Seymour*, 40 M. 275.

106. If a merchant buys goods intending never to pay for them, and intending to avoid payment by mortgaging them to another creditor, this is such a fraud as avoids the sale; it is the same as if the vendee had made false and fraudulent representations as to his financial standing at the time of the purchase: *Ross v. Miner*, 67 M. 410.

107. To avoid, on the ground of fraud, a sale of goods on credit, the fraud must have existed when the goods were sold, but it may be made out by evidence of the vendee's subsequent acts, admissions and dealings; and the vendor in an action to recover the goods is not restricted to evidence of the fraud and misrepresentations made by the vendee at or before the time of the sale: *Ross v. Miner*, 64 M. 204.

108. In order to prove fraudulent purchases it is not necessary to show defendants' complicity in the original scheme if there was a scheme. They may be unable to hold the goods without being guilty of actual dishonesty: *Redpath v. Brown*, 71 M. — (July 11, '88).

109. No inference of fraud can be drawn from the fact that money not yet due remains unpaid; but there is no error in admitting testimony that the purchase price of goods purchased by means of a falsehood is still unpaid: *Shipman v. Seymour*, 40 M. 275.

110. In an action for the value of goods sold, evidence that they were sold to defraud the vendor's wife is irrelevant; the sale might be fraudulent as to her but good as between the parties, and the question of fraud must be left to be raised by the party defrauded, who waives it by taking no proceedings to obtain redress: *Cool v. Snover*, 38 M. 562.

111. A bill of sale of a livery stock included "two two-seated full-top carriages," but it afterward appeared that one of the carriages which the vendor supposed was a full-top was not so. Held, that this mistake of fact could not, in law, relieve him of the obligation to deliver a full-top in its place or account for the value of such a carriage: *Lampson v. Cummings*, 52 M. 491.

(b) *False representations.*

In sale of land, see VENDORS, II.

As to false representations generally, see FRAUD, §§ 15-37.

112. A mere assertion of value made by the seller, where no warranty is intended, is no ground of relief to a purchaser, because the assertion is a matter of opinion which does not imply knowledge, and in which men differ. Every person reposes at his peril in the opinions of others where he has equal opportunity to form and exercise his own judgment: *Picard v. McCormick*, 11 M. 68.

113. But it cannot be laid down as a rule of law that value is never a material fact. And when the purchaser expressly relies upon the knowledge of the seller as to quality or value, the seller is bound to act honorably and deal fairly with the purchaser: *Ibid*.

114. A jeweller, knowing the purchaser's ignorance, deliberately and designedly availed himself of it to defraud him by false statements of the value of articles in his trade, which none but an expert could reasonably be expected to understand. It was held that an action would lie for fraud: *Ibid*.

115. A vendor's statements of his opinion as to his stock do not generally stand on the same footing as facts; but they are sometimes ground of liability in an action for fraud where they are meant and understood on both sides to be relied on: *Jackson v. Collins*, 39 M. 557.

116. A vendor's honestly expressed but incorrect opinion as to the amount, quality and value of the goods he sells will not support an action for fraudulent representations if the purchaser sees or knows the property, or has opportunities to know it. The purchaser cannot recover unless the vendor, with superior means of knowledge, intentionally gives a false opinion as to material facts for the purpose of defrauding the purchaser, and the latter has reason to rely and does rely on it as true: *Collins v. Jackson*, 54 M. 186.

117. In an action for fraudulent representations by the vendor on the sale of goods, it is for the jury to determine whether the opinion expressed is false and known to be so to the vendor, and to what extent it is relied on by the purchaser without negligence: *Ibid*.

118. Complainant being owner of certain real estate sold the same to defendant, and received in payment certain copper stock and defendant's note. Defendant directed complainant, before taking the stock, to make inquiries as to its value, and not to rely upon the defendant's estimation of it. The stock

proved worthless. Held, that in such a case, where parties stand upon equal terms as to their opportunity of obtaining information concerning them, each must rely upon his own judgment and means of information: *Becker v. Hastings*, 15 M. 47.

119. Where one who offers a mortgage in payment remarks on its value, irrespective of the question of the existence of a prior mortgage, his remarks should be taken simply as the expression of his opinion, or as a matter of commendation; the other party to the trade, if ordinarily diligent, can judge of the value as well as he, and is therefore not relieved from the application of the principle of *caveat emptor* in regard to it: *Bristol v. Braidwood*, 28 M. 191.

120. Where one used a mortgage in making payment, his statement that there was no prior mortgage that he knew of, was not a fraudulent representation, but was of a character to fairly put the vendor upon inquiry to ascertain the fact for himself: *Ibid*.

121. Where the purchaser of a mortgage on distant lands relies on and is misled by representations made to him by the seller as to the mortgagor's responsibility and the value of the securities, which representations, though honestly made, were really false, they amount in legal effect to fraud, even though the seller had suggested to the purchaser that he look at the lands himself, as their judgment might not agree, and had offered to pay his traveling expenses if they did not suit; such a suggestion implies the assertion that the seller had exercised an intelligent judgment, and would increase the purchaser's sense of security therein: *Webster v. Bailey*, 31 M. 86.

122. A contract of sale cannot usually be avoided for an undervaluation, or because a party in bargaining has sought to abate and depreciate the price by the common bantering between buyer and seller: *Swinn v. Bush*, 26 M. 99.

123. A vendor's representation that a corporation's mortgage bond which he was selling "was just as good as gold, and was just as good as wheat in the bin, and was worth \$1,000," was not allowed to sustain a recovery in an action for fraud and deceit brought by the vendee: *French v. Fitch*, 67 M. 492 (Nov. 10, '87).

124. In an action to recover damages for the sale to plaintiff of certain corporate stock by fraud and deceit, and also a mortgage bond of the corporation, certain evidence as to the value of the corporation's real estate, made some time after the sale and after the company's factory had closed, was held too remote,

and the error of admitting it was *held* not cured by the court's charge: *Ibid*.

125. Defendant sold plaintiff shares of corporate stock, representing that the capital stock was all paid up. Defendant admitted the representation, and claimed that it was true. The evidence showed that when the company was formed only 60 per cent. was paid in on the stock, and it was claimed that afterward, before plaintiff bought, 40 per cent. was paid in by stock dividends or by adding the profits of the business to the capital stock, thus increasing it to its full face value. *Held*, that there was sufficient evidence in the case to warrant submission to the jury (who found for plaintiff): *Kryger v. Andrews*, 65 M. 405.

126. Representations made by a vendor at the time of a sale as to the quality of the article sold are merged in an express warranty; and an action of fraud cannot be based on such representations unless the vendor knew them to be false when made: *Horner v. Fellows*, 1 D. 51.

127. One who, to induce another to buy, recklessly makes a false representation, of the truth or falsity of which he knows nothing, whereby the vendee is deceived and defrauded, is liable: *Beebe v. Knapp*, 28 M. 53.

128. One is liable for false representations made intentionally to induce, and which do induce, action in reliance upon them; and it is fraud if he believes or has reason to believe them false, whether he knows them to be false or not: *Stone v. Covell*, 29 M. 359.

129. In an action for the value of timber delivered under a contract, there was no error in excluding testimony that before the contract was made one of the plaintiffs had represented the timber as of specified dimensions, where there was nothing to show that the representation was made to any one interested: *McKay v. Evans*, 48 M. 597.

130. In trover for goods sold upon representations by the purchaser as to his solvency, the jury have no right to assume that the plaintiff did not rely on the representations in making sale, if there is testimony to support his claim that he did, and none to the contrary: *Heineman v. Steiger*, 54 M. 282.

131. One who enters a vessel on a shipbroker's books as for sale is responsible for the correctness of the data of description there appearing, if they were meant to be relied on and were relied on: *Gilchrist v. Manning*, 54 M. 210.

132. The continuous use which the purchaser of a vessel may be compelled to make of it after discovering defects does not waive

damages to which he is entitled for false representations, whatever effect it may have on his right to a rescission: *Ibid*.

133. False representations, whereby a vendee is deceived and defrauded, may be treated as warranties and *assumpsit* brought at the vendee's option: *Carter v. Glass*, 44 M. 154.

Damages for inducing vendee to buy goods on false representations, see DAMAGES, § 240.

III. WARRANTIES.

(a) *Express warranties.*

134. Where a blank warranty with the vendor's printed signature is indorsed on an order for a machine, in which order the full benefit of such warranty is reserved to the vendee, such reference to the warranty constitutes the order and the warranty one instrument, and failure to fill up the blanks is immaterial; and the printed signature, being adopted by the vendor, binds: *Grieb v. Cole*, 60 M. 397.

135. No particular form of words is required to constitute a warranty, nor need the word "warrant" be used; but it is necessary that such expressions should be used as show the intention of the party to bind himself to make good the quantity named, and not a mere statement or expression of opinion as to the quantity of lumber which could be manufactured from the logs from which it was to be cut: *Switzer v. Pinconning Manuf. Co.*, 59 M. 488.

136. A binding contract of warranty must express or imply a promise to make good such representations as to the merchandise sold as were relied on by the purchaser in buying; it cannot rest merely on the seller's expressions of an honest opinion, however mistaken it may be: *Linn v. Gunn*, 56 M. 447.

137. The representation by the vendor of a threshing-machine that it is a very good machine and will do nice work is not a warranty: *Worth v. McConnell*, 42 M. 478.

138. In a contract for the sale and delivery of a patent diamond drill, the proviso that the machine was "to be complete in everything for working" is *held* not to be an express warranty that the machine would do the work for which it was purchased, but to mean only that the machine, such as it was in principle and range of usefulness, should be delivered fully prepared and equipped to do what in principle it was capable of doing: *McGraw v. Fletcher*, 35 M. 104.

139. The vendee of a steam-engine which proved of little or no value defended a suit for the purchase price, claiming that he bought with warranty, and relying upon statements of the vendor at the time of the sale to establish the warranty. But it appeared that after the engine had been thoroughly tested and proved a failure, he had written letters to the vendor from time to time, apologizing for not having paid for the engine as he had agreed, and asking more time—in none of which was any allusion made to a warranty, or claim set up to damages. *Held*, that these letters satisfactorily negatived any idea that the statements of the vendor at the sale were regarded as a warranty: *Deuel v. Higgins*, 9 M. 228.

140. Value may be the subject of warranty in a contract of sale: *Picard v. McCormick*, 11 M. 68.

141. A warranty of the soundness of a horse, unless expressly restricted, extends to all manner of soundness, whether known to the vendor or not; and the question whether the animal was in any way unsound at the time of sale is for a jury: *Van Hoesen v. Cameron*, 54 M. 609.

(b) Implied warranties.

142. Where a warranty is express there can be no implications: *McGraw v. Fletcher*, 35 M. 104.

143. When articles of food are bought for domestic consumption, and the vendor sells them for that express purpose, the law implies a warranty that they are fit for such purpose, whether the sale be by a retailer or by any other person: *Hoover v. Peters*, 18 M. 51.

144. A baker impliedly warrants the wholesomeness of the bread which he sells at a discount to the peddler who distributes it: *Sinclair v. Hathaway*, 57 M. 60.

145. A usage in effect warranting without express warranty the soundness of uninspected fish caught within the state, and sold, is void as defeating the policy of the inspection law: *Tremble v. Crowell*, 17 M. 493.

146. Where the vendee of timber sold by written contract failed to secure an express warranty as to the amount of timber of the quality sold, it was *held* that no warranty could be implied, though the yield through unsoundness fell short of what was expected: *Nester v. Michigan Land, etc. Co.*, 69 M. 290 (April 13, '89).

147. A sale according to a scale already made, without any previous employment of

the scaler by the vendee as well as the vendor, implies a warranty by the vendor that the scaler is competent and the scale honestly made, unless it clearly appears that the vendee assumed that risk: *Ortman v. Green*, 26 M. 209.

148. Where a sale of all the merchantable logs in a certain lot is made without inspection by either party, no warranty that any particular log is merchantable is implied; and after the buyer, or the person selected by the parties to scale the logs, has accepted one, he cannot afterwards complain that it is not merchantable: *Leonard v. Davis*, 1 Black (U. S.), 476.

149. Whether a warranty of utility in the working of a machine in some special service not strictly within the sphere of action for which it was contrived can be implied must depend upon the particular facts; and a strong case ought to be required to support the inference of an agreement by the seller that a machine designed for one kind of work will operate well in practice in work of a different character: *McGraw v. Fletcher*, 35 M. 104.

150. Where a rock-drill was bought to use in exploring for minerals, both parties understanding that the machine had not been contrived for that kind of work and that its usefulness therefor had not been tested, but the vendor having, before his purchase, seen it in operation drilling rock, and the indications being that it was tacitly understood he should take it at his own risk, it was *held* no warranty was implied: *Ibid*.

151. A purchase of a machine from a dealer implies that the machine shall be new—that is, not second-hand or the worse for wear; and under an order therefor the dealer cannot impose upon the vendee a second-hand and worn machine, whether it complies with the terms of his warranty or not as to its being well made and that it will do as good work as any machine of its class: *Grieb v. Cole*, 60 M. 897.

152. A contract for the exchange of property implies and includes a warranty of title: *Hunt v. Sackett*, 31 M. 18.

153. A sale of genuine documents—such as school-orders—does not involve any warranty that the officer who issued them was authorized to do so: *White v. Robinson*, 50 M. 73.

154. One must be understood to warrant the genuineness of a transaction between himself and another on which he has induced a third person to rely: *Gregory v. Wendell*, 40 M. 482.

(c) *Rights and remedies under warranty.*

1. Return; acceptance; waiver; release.

155. Two months' delay in tendering back an unsatisfactory machine that had been sold with a warranty and did not fulfill its terms was not unreasonable where the vendor was allowed for the greater part of that time to continue his efforts to make it work: *Felt v. Reynolds Rotary Fruit Evap. Co.*, 52 M. 602.

156. Payment for goods sold with a warranty does not necessarily preclude the purchaser from tendering them back for non-fulfillment of conditions if the payment was made as an accommodation and without waiving any rights: *Ibid.*

157. Breach of warranty may be set up as a defence without returning the goods, unless the contract of sale expressly requires their return. The omission to return them only affects the amount of damages recoverable: *Hull v. Belknap*, 87 M. 179.

158. Where the vendor of a machine warrants it to do as good work as one owned by a certain third person, and there is nothing in the contract of sale requiring the purchaser to notify the vendor of the machine's failure to do good work or to return it in that event, the vendee is not bound to return it: *McCormick Harvesting Machine Co. v. Cochran*, 64 M. 636.

159. A fanning-mill was sold on the representation that it was good and would do a good business. The purchaser gave his note for it, to which it was added that the note was given for the mill, which was warranted to be good and to do a good business, and that if it was not good the purchaser was to have the privilege of returning it within a certain time, and the seller was to furnish a new mill in exchange which should be good. In an action on the note it was held that, unless it was shown the seller knew at the time of the sale that the mill was not good, the purchaser was bound to return it according to the condition annexed to the note before he could avail himself of any defect in the mill in his defence: *Horne v. Fellows*, 1 D. 51.

160. A manufacturer who sells an engine not made by himself with warranty that it is in good condition, and, if not found so, shall be placed in such condition, puts himself in a position analogous to that of one who contracts to build and furnish one; and an acceptance by the purchaser is conditional, and does

not bind him to keep it, unless answering the warranty: *Kimball & A. Manuf. Co. v. Vroman*, 85 M. 310.

161. Suit was brought on a note given for a reaper which the vendor had warranted to do first-class work. The warranty purported to bind the purchaser to give reasonable notice of defects to the vendor or his agent, and provided that if the latter did not remedy the difficulty the machine was "to be returned" and replaced, or the money or note refunded. It was not signed, however, by the purchaser, and was silent as to the manner and place of delivery in case the machine should be returned. The vendor and his agent lived at different places. Held, that the court could not say at which place the machine must be returned; and that when the purchaser had given notice of defects to the vendor or his agent, it was the latter's place to remedy them or furnish a perfect machine, and if he claimed that it was all it had been represented to be, the case should have been submitted to the jury on that issue, irrespective of the purchaser's failure to deliver the machine again to the vendor: *Osborn v. Rawson*, 47 M. 206.

162. A wind-mill was bargained for, to be put up in good order and warranted for sixty days. It worked ill, and the vendors from time to time agreed to put it in proper condition and endeavored to do so. Held, that the vendee's allowing it to remain meanwhile upon his land and using it at times did not amount to an acceptance; and that it was proper for the jury to take these facts into consideration to determine whether there had been a performance by the vendors and an acceptance by the vendees: *Phelps v. Whitaker*, 87 M. 72.

163. Where the vendor of a machine warrants it to do good work, and the vendee has notified the vendor that it does not work well, the vendee's allowing it to remain on his land and continuing to use it while the vendor is trying to repair it does not amount to an acceptance: *McCormick Harvesting Machine Co. v. Cochran*, 64 M. 636.

164. Logs were sold warranted to cut a certain proportion of lumber of first quality, and the tests for determining the quality were agreed upon. The purchaser by his voluntary act after delivery rendered it impracticable to apply these tests. Held, that he must be deemed to have accepted the logs as fulfilling the warranty: *Hall v. McEwen*, 19 M. 95.

165. Rope sold in October, 1868, with an express warranty of its strength, was delayed in transportation and the vendee refused it;

but afterwards, in May, 1885, while the vendor was negotiating a sale of it to others, the vendee appropriated it, credited the vendor on his books with the price, and sent him a payment which was accepted. In an action for the price begun in April, 1887, *held*, that the defendant could not for the first time set up defects in the rope and recoup damages for a breach of the original warranty: *Roebeling's Sons v. Winthrop Hematite Co.*, 70 M. 346.

166. One who sells goods with warranty of title to a purchaser in another jurisdiction cannot claim that his liability thereon is released by any reasonable arrangements which the buyer finds himself compelled to make with the holder of an existing lien to enable him to remove the goods to his own domicile; and the fact that such a removal changes the venue of any consequent action does not necessarily support an inference of fraudulent combination by the buyer and the lien-holder against the seller: *De Witt v. Prescott*, 51 M. 298.

2. Claim by third party; notice; assumption of defence.

167. Judgment in favor of a third person in replevin against the vendee of a horse was not allowed to sustain a recovery by the vendee against the vendor as for breach of warranty of title: *Moore v. Bostwick*, 23 M. 507.

168. Where a vendee is sued in replevin by a third person who recovers judgment for the amount of a lien, such judgment is not evidence of a breach of the vendor's warranty of title, unless the vendor was properly notified to defend the suit or undertook to do so without notice: *De Witt v. Prescott*, 51 M. 298.

169. Nor is a vendor bound unless notified to defend — even though he was a witness in the cause — by the result of a suit which his vendee received notice to defend, and which was brought against the vendee of the latter: *Axford v. Graham*, 57 M. 422.

170. Notice to a joint vendor, who is manager of the business and makes all the bargains, to defend a suit brought against the vendee, is notice to his co-vendor: *De Witt v. Prescott*, 51 M. 298.

171. If the vendor assumes the defence of an action by a third party against the vendee for the value of the goods sold, judgment for plaintiff shows a breach of warranty, even though the suit is in *assumpsit* when it ought, strictly, to have been in trespass or trover;

and to charge the vendor with the costs of such suit written notice to defend was unnecessary, vendor having in fact assumed the defence: *Jennings v. Sheldon*, 44 M. 92.

172. Where replevin is brought against a purchaser, and the seller assumes the defence in order to protect himself on his warranty, the purchaser cannot be required to watch and defend the action without at least adequate notice and adequate reason: *De Witt v. Prescott*, 51 M. 298.

3. Actions; pleading.

173. The right of action for breach of warranty is assignable: *Felt v. Reynolds Rotary Fruit Evap. Co.*, 53 M. 602.

174. Where a contract for the sale of machinery contemplates that it shall be tested and put in running order, a cause of action does not arise upon the warranty therein until a reasonable time has been allowed to make the necessary tests; and the time taken by the parties in trying to make the machinery fulfil the conditions of the contract is a proper criterion as to what is reasonable: *Ibid.*

175. The sale of goods by a vendee who has accepted them on condition that they comply with a warranty makes the conditional acceptance absolute; but a conditional acceptance alone does not perfect his right of action upon the warranty until it appears, upon reasonable trial, that the goods do not comply with it: *Ibid.*

176. A vendee sued by an adverse claimant need not await the result of the action before suing for breach of warranty: *Jennings v. Sheldon*, 44 M. 92.

177. An action brought for breach of the implied warranty in a contract for the exchange of property does not rescind but affirms the contract, and need not be preceded by any such act of disaffirmance as tendering back boot-money or demanding the property given in exchange: *Hunt v. Sackett*, 31 M. 18.

178. When it is one of the terms of a contract that an engine is good, and if not found so on trial shall be made good, the right to return it in case of failure is in pursuance and not in avoidance of the contract; and a count for breach of warranty is not inconsistent with one averring return, or with the common count for money had and received: *Kimball & A. Manuf. Co. v. Vroman*, 35 M. 310.

179. Where a declaration for breach of warranty fully sets out the contract of sale and avers a return, the question whether, upon a breach, the right exists to return the property, is one of law; and where there is no

such right an averment of return is mere surplusage: *Ibid*.

180. The declaration in an action for breach of the implied warranty of title in a contract for the exchange of property must count on the contract itself, as this alone creates the obligation: *Hunt v. Sackett*, 31 M. 18.

181. Even in justice's court a declaration for breach of warranty must show the nature of the warranty and state the breach: *Smith v. Hobart*, 43 M. 465.

182. A vendee deceived by a false warranty may sue in tort; and the fact that he sets out the warranty and avers breach does not make his declaration one in *assumpsit* when the essentials of a declaration in case appear: *Carter v. Glass*, 44 M. 154.

183. Such a declaration need not allege that defendant "falsely and fraudulently warranted," and "falsely and fraudulently deceived" plaintiff, if the false warranty, the fraudulent sale and deception of the purchaser are substantially alleged: *Hopkins v. O'Neil*, 46 M. 403.

184. A declaration in justice's court setting up false warranty, etc., sustained as one in *assumpsit* for damages for vendor's refusal to surrender note given on sale: *Thomas v. Schram*, 52 M. 218.

4. Evidence; recovery.

185. The vendee rejected the goods on arrival as not merchantable. *Held*, in *assumpsit* against him, that it was not error to permit the exhibition of some of them to the jury, and to admit evidence as to how they compared with others, and also to allow the exhibition of samples from other merchants to show that the goods were not as ordered: *Imbrie v. Wetherbee*, 70 M. 103.

186. And where the goods were such that the court could not take notice that they were perishable (see EVIDENCE, § 1015), it was not error, in the absence of evidence that their condition was subject to change, to admit testimony as to examinations made by the vendee first, on their arrival, then ten days afterwards, and again after nine months: *Ibid*.

187. Where the evidence showed that three days after a machine was delivered to defendant he gave plaintiff written notice of his refusal to purchase it, and that it was at plaintiff's risk — the testimony showing also that it had not been used since, — *held*, that evidence of the condition of the machine was admissible though based on an examination made after trial in justice's court: *Grieb v. Cole*, 60 M. 397.

188. In an action for the price of a machine sold, evidence as to how similar machines worked is inadmissible to prove that the one in question worked as it was warranted: *Osborne v. Bell*, 62 M. 214.

189. In an action for the price of a machine sold, where the question is as to the working of the machine, testimony of a witness as to the working of other machines is properly stricken out if it appears therefrom that they are not like the one in suit: *Locke v. Priestly*, 71 M. — (July 11, '88).

190. In suit for the purchase price of a McCormick harvester, where the defence is a breach of warranty that the machine would do as good work as any in the market, the question whether the McCormick is as good as any in the market is to be excluded, the merits of the particular machine sold being all that is material: *McCormick Harvesting Machine Co. v. Cochran*, 64 M. 686.

191. A contract of sale of a machine stipulated that it would produce a certain number of wheels when used in a certain way. *Held*, in an action for the price, that testimony of a witness who had worked with other machines as to the working of such others was inadmissible: *Locke v. Priestly*, 71 M. — (July 11, '88).

As to evidence and tests of performance of warranty in an action for price of an engine warranted to effect a certain saving in fuel, see EVIDENCE, §§ 73, 98-101, 197.

192. Admissions by one of two vendees that the machine worked well are not binding upon the other, who was absent when the statements were made: *Osborne v. Bell*, 62 M. 214.

193. Where goods were sold with warranty, and the defence to an action for part of their price was grounded on a breach thereof, an inquiry as to whether part of the goods were sound that had been returned as unsound was relevant on the cross-examination of the plaintiff, who had testified as to the contract and its performance: *Hull v. Belknap*, 37 M. 179.

194. In a suit on a warranty of a horse, evidence that two years after he was bought he killed himself in a fit of balking is not too remote if it is shown that his balking was a common habit extending through the whole time. Evidence may also be given that he was balky three years before the sale: *Daniels v. Aldrich*, 42 M. 58.

195. One who sues on a warranty of the soundness of a horse can show by the testimony of a former owner that the horse while owned by him was diseased, if the disease

was one which might have resulted in subsequent unsoundness: *Van Hoesen v. Cameron*, 54 M. 609.

196. In an action upon a warranty the allowance of a hypothetical question which did not relate to the condition of the article sold at the time of the sale was held to be cured by a cross-examination which supplied the omission and placed all the facts necessary to the formation of an opinion before the witness: *Ibid*.

197. In a suit on a warranty of a horse it was shown positively, and was undisputed, that defendant assured plaintiff that the animal was a good work-horse; that he was true and all right, and true as a dollar, kind as a kitten, and as good a horse as any in the county. Held, that a refusal to require the jury to find specifically and report whether the defendant warranted the horse, and if so in what words, was not error, as the evidence, if believed, was enough to make out a warranty, and there could not have been any finding inconsistent with it: *Daniells v. Aldrich*, 42 M. 58.

198. The agent for a firm of wind-mill manufacturers took a written order for and put up a mill under a bargain involving oral representations and a printed warranty. In a suit for the price of the mill he was called upon to prove that he put it up and furnished it with the appurtenances required by the order, and left it in good condition. Held, that the defendant was entitled to show by cross-examination what was said and done between them from which the contract rose, and also that the agent had not put up and left the mill in good running order: *Phelps v. Whitaker*, 37 M. 72.

199. One who trades horses and takes money to boot cannot, on failure of title to the horse he receives, recover back the consideration or the value of the horse he gives, on the ground of a total failure of consideration, so long as he keeps the boot-money; his right is really to sue to recover damages for a breach of the warranty which the trade implies: *Hunt v. Sackett*, 31 M. 18.

And see ACTIONS, § 53.

200. Where the warranty broken is one that justifies the return of the property, which is attempted and refused, plaintiff, if he shows the purchase price, is at least entitled to recover such price with interest: *Kimball & A. Manuf. Co. v. Vroman*, 85 M. 810.

IV. RIGHTS AND REMEDIES OF PARTIES.

(a) *In general.*

201. Where a merchant sells goods to a purchaser at a distance, and contracts to ship

them at a certain time by a specified route, but, instead of doing so, sends them by some other, it is at his own risk of loss or unseasonable delay: *Fleming v. Mills*, 5 M. 420.

202. Where it was contracted that timber should be delivered in the river to vessels sent for it, it was held that, unless the purchasers delayed unreasonably in sending vessels, they could not be held for any expenses in caring for it while in the river awaiting delivery: *Merick v. McNally*, 26 M. 374.

203. A purchaser's delay in removing merchandise from the charge of a bailee in a reasonable time after constructive delivery cannot subject the vendor to the risks of storage: *Carpenter v. Graham*, 42 M. 191.

204. If one who ships poorer goods than are ordered does not notify his customer of their inferiority he must stand the reasonable and necessary expense of testing them, and then of storing them to await the vendor's orders; and these expenses may properly include insurance, freight and cartage: *Philadelphia Whiting Co. v. Detroit White Lead Works*, 58 M. 29.

205. The vendor cannot recover for the barrels in which the goods were shipped, nor is the buyer chargeable for the quantity necessarily used in testing the quality: *Ibid*.

206. An arrangement having been made between vendor and vendees that the quantity of logs embraced in the contract of sale should be determined by the mill-run at the mill where vendees were having them sawed, the vendor on suing for the purchase price cannot ignore the facts concerning the scaling at such mill, but must show them: *Perkins v. Hoyt*, 85 M. 506.

(b) *Rescission.*

As to rescission of contracts generally, see CONTRACTS, XIII.

As to rescission of contracts for the sale of land, see VENDORS, I, (d).

207. A contract of exchange may be rescinded where the property received on the trade is taken away again by virtue of a valid chattel mortgage: *Hunt v. Sackett*, 31 M. 18.

208. Parties bargained for the sale and purchase of a cow upon the mutual understanding and belief that she was barren, the price being about one-tenth of the value if capable of breeding. Before delivery it was discovered that she was with calf. Held, that the vendor was entitled to rescind and to refuse to deliver: *Sherwood v. Walker*, 86 M. 568.

209. Where a man agreed to sell a "certain cow and fifteen of his best pigs and such

two sows as they should belong to," and the bargain for the cow at first stood by itself, but the vendor privately agreed to take seventy-five dollars, but told the purchasers they might fix the price of the cow at thirty or thirty-five dollars, as they chose, and give the rest for the pigs, the contract could not be considered so far indivisible as to justify the purchaser in treating a failure in the quality of the pigs as rescinding the bargain for the cow. And in a suit for the breach of contract he must make out his case affirmatively and show that his loss of profits is on the pigs: *Howard v. Bellows*, 49 M. 620.

210. The rule that one cannot rescind a contract in part and affirm it in part does not apply where a purchaser of stock, the items of which are particularly described in the bill of sale, refuses to accept an article which varies from the description, and sues the vendor for failure to fulfill the contract of sale: *Lampson v. Cummings*, 52 M. 491.

211. Where the vendee, with whatever intent, mortgages goods held by him under a contract of purchase, the vendor may rescind: *Winchester v. King*, 46 M. 102.

212. Vendors may rescind a sale procured by fraud: *White v. Mitchell*, 38 M. 390.

213. A seller may rescind where the buyer purchased knowing of his own insolvency and intending to withhold payment: *Doyle v. Miener*, 40 M. 160.

214. But this doctrine has no application to a case where the controversy is whether a subsequent sale from the vendee to other parties was fraudulent as against his vendor's attaching creditors: *Beurmann v. Van Buren*, 44 M. 496.

215. Vendor's right to rescind for fraud applies as against purchasers from his vendee who collude with the latter to carry out his schemes: *Redpath v. Brown*, 71 M. — (July 11, '88).

216. Action for payment by a vendor who has a right to rescind for fraud affirms the contract and precludes him from denying it: *Galloway v. Holmes*, 1 D. 380; *Beurmann v. Van Buren*, 44 M. 496.

217. Where a vendee acquiesces in a rescission and seeks to recall what he has paid he cannot claim profits that he would have made had his bargain been carried out: *Drydall v. Smith*, 44 M. 119.

(c) Resale.

218. It seems that notice of resale is unnecessary where a contract purchaser refuses to receive the goods and the contract is silent

on the subject, and the purchaser's liability on the contract is not to be fixed by the price obtained on the resale: *Holland v. Rea*, 48 M. 218.

219. Where a contract purchaser did not take the goods and the vendor resold them and sued on the contract, held, that a refusal to charge "that plaintiff had no right to sell without notice to defendant" was not error, as it was not clear whether the party requesting the charge meant notice of resale or of the intention to resell: *Ibid*.

220. A vendor's right of resale must be exercised in good faith and at such time, by such methods and under such circumstances as are most likely to produce the fair value of the property; and he has the burden of showing that it was so exercised: *Brownlee v. Bolton*, 44 M. 218.

221. A purchaser's liability for any part of the purchase price is cancelled by the vendor's wrongful resale of the goods: *Bowser v. Birdsell*, 49 M. 5.

222. Where a contract of sale is broken by the purchaser, the obligation resting on the seller to reduce the damages as far as possible by a prudent disposition of the merchandise leaves him at liberty to choose any proper mode of disposing of it in his own judgment, provided he uses proper diligence; and he is not obliged to advance money or go to any expense that would not be necessary under any method that he might adopt. And the question whether he has done his duty as to disposing of it is for the jury: *Wonderly v. Holmes Lumber Co.*, 56 M. 412.

223. A. sold a chattel to B., who paid part of the agreed price. A., without right, resold the chattel to another, and offered to return to B. the amount that he had paid, which amount B. refused to receive. B. sued A., and failed to show greater damages than the amount paid. Held, that he was entitled to judgment for that amount without costs: *Bowser v. Birdsell*, 49 M. 5.

As to measure of vendor's damages where merchandise has to be resold on vendee's failure to take it, see DAMAGES, § 231.

(d) Stoppage in transitu.

224. The vendor's right of stoppage in transitu is based on the vendee's insolvency unknown at the time of sale or arising afterwards: *Gustine v. Phillips*, 38 M. 674.

225. Goods are in transitu when in the hands of a carrier for local delivery: *White v. Mitchell*, 38 M. 390.

226. One who sells goods to be delivered

for cash may reclaim them before delivery, although, supposing them to have been delivered, he has acted on that assumption — has, for example, made an affidavit as a creditor under his vendee's assignment, believing that the vendee had received and appropriated the goods, which was not so in fact: *Lentz v. Flint & P. M. R. Co.*, 58 M. 444.

227. Where the vendors of logs offer possession to the vendees, who accept such offer, and virtually take possession by having the logs taken into custody at their expense and on their account as owners by a booming company, the power of stoppage *in transitu* is cut off: *Muskegon Booming Co. v. Underhill*, 43 M. 629.

228. Logs were to be driven by the sellers to a certain point, but before reaching it their agent in charge of driving the logs turned them over to a booming company by the purchaser's order. *Held* that, as the facts concerning the agent's authority, and what took place concerning delivery were not submitted to the jury, the supreme court could not find that delivery in law had actually been made so as to take away the right of stoppage *in transitu*: *Underhill v. Muskegon Booming Co.*, 40 M. 660.

(e) *Vendor's lien.*

Upon lands, see VENDORS, V.

229. The lien on property retained by the vendor covers all its natural incidents and accessories, unless circumstances show a different intent: *Kellogg v. Lovely*, 46 M. 131.

230. The lien of a vendor is cut off by delivery of the property: *Muskegon Booming Co. v. Underhill*, 43 M. 629.

231. Whether a wholesaler who sells to a retailer can establish a lien upon the proceeds of the latter's sales by stipulating that they shall be held in trust for him, *quere*: *Adriance v. Rutherford*, 57 M. 170.

232. Where a partner sold to his copartner his interest in the firm's store, business, goods and accounts, the vendor to have a lien on said goods, etc., such lien was construed to give security on the whole interest in the goods, etc., on hand at the time, and not merely in an undivided half: *Northrup v. McGill*, 27 M. 234.

(f) *Action for price.*

1. When lies; defences.

As to suit on the common count for goods sold, etc., see PLEADINGS, §§ 142-152.

233. An action for the price of goods sold does not lie until title so passes as to deprive

plaintiff of his right to sell them: *Scotten v. Sutter*, 37 M. 528.

234. If goods are sold upon credit the vendor cannot sue for the price before the credit expires, though he can prove that the vendee induced him to sell by fraudulent misrepresentations: *Galloway v. Holmes*, 1 D. 330.

235. One who receives credit for goods in consideration of his agreement to do certain things which he fails to do may be sued for the price of the goods, as though no credit had been given: *Wineman v. Walters*, 58 M. 470.

236. Where, in an action on a contract of sale, it was shown that, after complete present delivery of the goods and performance in full by the vendor, the vendee had neglected or refused on demand to give the securities he had promised, it was *held* that the objection to the vendor's right of action that the vendee was entitled to a reasonable time within which to perform his part of the agreement, and which had not been given him, was untenable: *Cook v. Stevenson*, 30 M. 242.

237. Where two vendees of a machine are to give approved notes for its price, a demand for the notes must precede suit for the price, and must be made upon both vendees if they are not partners or joint owners: *Osborne v. Bell*, 62 M. 214.

238. Where, in an action for the price, the capacity of a machine is to be tested in establishing a condition precedent to payment, such test must comply with the conditions of the contract of sale: *Locke v. Priestly, etc. Co.*, 71 M. — (July 11, '88).

239. A vendee of personal property who retains it in his possession or converts it to his own use cannot, as a general rule, resist a suit for the purchase price on the ground of want of title in his vendor: *Estelle v. Peacock*, 48 M. 469.

240. But he may do so if the party claiming title assumes, to save a multiplicity of suits, the defence under an arrangement that the vendee shall pay him for the property if the defence fails: *Ibid.*

241. It is proper to show, in defence to an action for the price of a machine which has been ordered under the terms of a written instrument by which defendant agreed to pay a specified consideration and which provided for a test, that it was understood when the order was given, and was part of the consideration, that plaintiff should furnish a man to set up the machine, and that it was his usage to do so: *Wood Mowing, etc. Machine Co. v. Gartner*, 55 M. 453.

2. Evidence; recovery.

242. In an action to recover the price of goods sold by parol agreement there was a dispute as to whether certain articles were included in the sale, and the plaintiff offered to prove that those which he claimed were not sold were alone worth as much as the defendant claimed he had bought the whole for. *Held*, in the absence of reasons for such a sacrifice, that testimony as to their value was admissible, not to vary the contract actually entered into, but to aid the jury in determining what it covered: *Sager v. Tupper*, 38 M. 258.

243. In an action for the value of goods sold, evidence that a third person had taken away part of them and that defendant had therefore never received them was properly excluded in the absence of further evidence connecting the plaintiff with the failure to deliver them: *Cool v. Snover*, 38 M. 562.

244. An action for the value of merchandise was defended on the ground that by plaintiff's authority the sale had been made by his clerk on the latter's own account, and payment had been made to the clerk in wood. Defendant called the plaintiff as his witness, and the latter's testimony showed that the sale had been in part on credit and in his presence, but that he had not authorized the clerk to sell on his own account. The bill of exceptions states that it did not appear that plaintiff knew of any other arrangement between defendant and his clerk, and there was no evidence that any part of the negotiation took place at any other time. *Held*, that the court did not err to defendant's prejudice in refusing to allow him to swear that on the occasion of the sale he had made a private arrangement with the clerk to pay him in wood: *Burger v. Limbach*, 42 M. 162.

245. In suing for the price of a quantity of timber shipped to defendants at a distance and received subject to inspection, it is proper for plaintiff to show, as an element in the case, how much was loaded for shipment, if it appears that some of it was taken by defendants before inspection and that they used some which did not pass: *McLennan v. McDermid*, 52 M. 468.

246. In an action for the price of a machine sold, evidence is admissible, where defendant claims that the sale was conditioned on plaintiff's making the machine run, that persons sent by plaintiff's agent to make it work did not succeed: *Wheeler & W. Manuf. Co. v. Walker*, 41 M. 289.

247. In an action for the purchase price of

a machine, defendant may show under the general issue that the article delivered was not the one he purchased; so *held* where defendant's offer was to show that the machine delivered was a second-hand one, and his order, in connection with the circumstances under which it was made, called for a new machine: *Grieb v. Cole*, 60 M. 397.

248. In an action for the value of a quantity of timber sold under a contract, there was no error in requiring the jury to ascertain whether it was of the quality specified in the contract *as understood by the parties*. Their understanding was material: *McKay v. Evans*, 48 M. 597.

249. In an action for the price of goods sold, evidence as to the kind and character of goods sold to other parties than defendant, and as to the previous custom and manner of doing business between the parties previous to the making of the contract sued on, is inadmissible, the contract being unambiguous: *Gage v. Meyers*, 59 M. 800.

250. In an action upon a contract of sale which left an option as to acceptance, evidence as to defendant's acts or omissions is not pertinent: *Cole v. Homer*, 53 M. 438.

251. In an action to recover the price of lumber sold defendant in the pile and unmeasured, a bill having been rendered defendant for 150,000 feet, but an entry in plaintiff's books reciting "that the lumber was charged on estimate only, to be measured, and the balance paid afterwards," *held* the bill should govern and not the entry, which is a mere *ex parte* memorandum; and defendant's evidence that the highest estimate when he bought was only 150,000 feet was admissible: *Warner v. Feige*, 65 M. 92.

252. Testimony that allowances were to have been made for deficiencies to a certain amount is too indefinite to establish a defence to a suit for the price; it is only a conclusion of the witness, who should give the facts from which it is drawn: *Overall v. Bezeau*, 37 M. 506.

253. In an action for the price of goods delivered to one person on another's promise to pay for them, evidence that the goods were obtained from plaintiff, and that defendant directed them to be charged to him, supports a finding for plaintiff: *Montague v. Dougan*, 68 M. 98.

254. In an action for the price of a machine, the vendor's statements to a third person, as to the bargain, not in the vendee's presence, and after the contract was completed, were incompetent except to impeach the vendor, and then only after he had been

questioned concerning them: *Platt v. Broderick*, 70 M. 577.

255. Where the vendor of an article sues for the price, which the contract of sale has fixed, evidence as to what it cost plaintiff is irrelevant: *Locke v. Priestly, etc. Co.*, 71 M. — (July 11, '88).

256. In *assumpsit* on the common counts for the price of an engine sold under contract, evidence is admissible of the value of the engine: *Wickes v. Swift Electric Light Co.*, 70 M. 332.

257. In an action to recover for goods sold, their value must govern in the absence of any agreement as to price: *Comstock v. Sanger*, 51 M. 497.

And see DAMAGES, §§ 198, 194.

258. Plaintiff in an action for the price of lumber sold and delivered attached the lumber, and, having indemnified the sheriff, sold it for less than the contract price. Held, that what he realized on such sale must be treated as a partial payment upon his claim: *Jenkinson v. Monroe*, 61 M. 454. See PLEADINGS, § 381.

Further, as to measure of damages, see DAMAGES, §§ 226-231.

As to recovery in cases of partial delivery, etc., see ASSUMPSIT, §§ 151-154; DAMAGES, §§ 188-201.

(g) *Buyer's rights and remedies.*

259. Where a contract is made for timber on the basis of an estimated quantity, and the quantity falls short, the purchaser is entitled to have a corresponding amount of the purchase price refunded, whether the contract so provides or not. And in an action on the common counts therefor, the contract is admissible in evidence to show defendant's receipt of the money and explain his possession of it, and to prove the extent of plaintiff's claim: *Phippen v. Morehouse*, 50 M. 587.

260. S. sold D. as much timber as D. should take away before a certain date, but before that time sold the land without reservation to M., and agreed to settle with D., who presented a claim for the amount he had paid and for getting out the timber. S. did not pay, however, and D. sued him. Held, (1) that the action was not based on the contract of sale, but on the later transactions, to which the contract and the deed to M. were mere matters of inducement, and it was for the jury to determine whether D.'s claim was well founded; (2) that it was not material whether or not he had notice of the sale;

(3) that, as D. recalled the price he had paid and claimed payment for his outlays, he could not show what profits he might have made: *Drysdall v. Smith*, 44 M. 119.

261. Where a vendee has agreed to pay in notes, a later arrangement to the effect that no notes need be given, but only a mortgage, relieves him from personal liability: *Russell v. Bondie*, 51 M. 76.

262. One who purchases articles specifically described, and pays for them, is entitled to articles corresponding to the description or he may sue in *assumpsit*; nor is he bound to return those articles which do correspond: *Lampson v. Cummings*, 52 M. 491.

263. Money paid in advance for goods, which not only do not correspond to the contract but are worthless, may be recovered back by the buyer as paid without consideration, or treated as set-off, with no other notice to the dealer than the goods are held subject to the latter's order than is implied in notice of the facts of the worthlessness of the goods and of his refusal to take them: *Petersen v. Door, Sash & Lumber Co.*, 51 M. 86.

264. Under a contract to cut, during the winter of 1871-72, a quantity of cedar posts and to deliver them at a specified price on the rail of vessels to be furnished by the vendees, it is held the purchasers were bound to furnish vessels within a reasonable time during the season of 1872; and that where vessels were not furnished until 1874 the purchasers were not entitled, in the absence of any new arrangement, in an action brought against them to recover the purchase price of the posts received by them, to deduct the cost of taking the posts from the beach, where the vendors had delivered them for shipping, and placing them on the rail of the vessel: *Bolton v. Riddle*, 35 M. 13.

265. In declaring for a failure to deliver, a count alleging that defendants are indebted to plaintiff in the sum of \$3,000 for damages by reason of their failure to ship certain goods bought of them was held insufficient, as it stated no consideration for the alleged agreement, no promise to pay any amount for which defendants were indebted to plaintiff, no promise by defendants to ship, no tender of payment or performance by plaintiff, and no valid contract of any kind: *Thomas v. Greenwood*, 69 M. 215.

As to the measure of damages for vendor's failure to deliver, see DAMAGES, §§ 33, 34, 232-242.

Or for partial or varied delivery, see DAMAGES, §§ 188-204.

V. CONDITIONAL SALES.

266. The owner of a chattel has a right to sell it conditionally, and, though delivering possession to the conditional vendee, to retain the absolute title until condition performed; and a *bona fide* purchaser from the vendee gets no title as against the absolute owner unless the condition has been waived: *Couse v. Tregent*, 11 M. 65.

267. A. contracted with C. to erect a mill on C.'s land, C. to furnish all lumber and material for the building and machinery, and A. to furnish all the labor and the machinery, and to pay for transportation. A. was to be paid in part at date of contract, balance on completion. J., who had furnished machinery to A. under condition that title should remain in J. and that the machinery should not become a fixture until full payment, sued C. in trover; but it was *held* that he could not recover, because he knew, when he sold the machinery to A., that he purchased it for the purpose of attaching it to C.'s realty, under a contract with C. that bound him to do so, and with that knowledge obtained part of the money paid by C. to A., and guaranteed shipment of the machinery to be so used without notice to or knowledge by C. that J. still claimed title to the machinery: *Jenks v. Colwell*, 66 M. 420.

Evidence as to knowledge of purchaser from conditional vendee, see EVIDENCE, § 282.

268. The owner of a sewing-machine delivered it to another, who gave back the following receipt: "Received of G. one certain sewing-machine, which I agree to keep and carefully use, and not remove from Wayne county, and at the expiration of three months from date return the same to him free of charge and unincumbered; provided always, and it is expressly understood, that if, on or before the expiration of the above time, I shall pay to said G. the sum of sixty dollars, then this receipt shall be null and void, and the said G. shall execute to me a bill of sale of the said machine." *Held*, that this was a bailment, importing a personal trust not transferable; that no title to the machine passed until the money was paid, and that G. might replevy it from one to whom the receiptor, without paying, had sold it: *Dunlap v. Gleason*, 16 M. 158.

269. Where an agreement to sell a piano provides that it shall remain the property of the vendor until full payment, and that in case of failure to make any payment the vendor shall be entitled to possession and the

agreement shall become void, such agreement is one for a conditional sale only, and is terminated by a default in payment: *Preston v. Whitney*, 23 M. 260.

270. Where one who has contracted to buy a chattel, binding himself to keep it in his possession as the property and subject to the directions of the vendor until paid for, gives it away to a third person, this is a wrongful determination of his contract of bailment, and he is liable to the vendor in trover for the amount still due on his contract: *Johnson v. Whittemore*, 27 M. 463.

271. A contract for the conditional sale of a piano, providing that it shall remain the property of the vendor until its full price shall be paid, and shall meantime remain at the vendee's residence at a specified place unless the vendor's written assent is given to move it, creates a bailment in the vendee, and the condition against removal is valid: *Whitney v. McConnell*, 29 M. 12.

272. A lease of a sewing-machine gave the privilege of purchasing the machine by paying the full amount of the rent at any time during the continuance of the lease, but reserved to the lessor all property in the machine, and the right to control it until the purchase money was paid in full, and also gave him the right to seize it on default in payment. *Held*, that the title continued in the lessor, and that as matter of law he had a right to dispossess the lessee in case of default: *Smith v. Loxo*, 42 M. 6.

273. A contract allowing a vendor to retain title to property in the vendee's control and possession until the purchase price is paid is not to be extended by implication so as to cover after-acquired goods: *Edwards v. Symons*, 65 M. 848.

274. Machinery was transferred with a written stipulation that title should not pass until it was paid for, and that when all the terms and conditions were fulfilled the vendor would give a bill of sale that the vendor might resume possession at any time for breach of contract, but that the purchaser might remove the property, and should assure it and assign the insurance policy to the vendor to secure deferred payments. *Held*, that such transaction was valid, and that, until the property was paid for, creditors of the purchaser could not levy thereon: *Marquette Manuf. Co. v. Jeffery*, 49 M. 283.

275. Mortgaging goods held under a contract of purchase, before fulfilling the obligations of the contract, is an assumption of ownership; and the intent with which it is done is

immaterial so far as concerns the vendor's right to reclaim them: *Winchester v. King*, 46 M. 102.

276. The transfer of the possession of property by a vendor to a vendee, to be held by him until future measurements and computation shall be made, even though the sale is under circumstances that leave it incomplete, nevertheless gives a right of possession which cannot be revoked by the vendor or any one having no superior rights; if it creates no more than a peculiar bailment it is not a revocable bailment: *Colwell v. Keystone Iron Co.*, 38 M. 51.

277. Retention of title by the seller until full payment is made is not necessarily inconsistent with the buyer's right to the possession of the goods; and, if no time is fixed for completing payment, the buyer is entitled to reasonable time before the seller can demand the return of the goods and replevy them: *Adams v. Wood*, 51 M. 411.

278. After making payments on property which he holds under an agreement that title shall not pass until the price is wholly paid, the vendee acquires an interest in the property, and may waive a return after the vendor has replevied it without demand, and may take judgment for the value of such interest: *New Home Sewing Machine Co. v. Bothane*, 70 M. 443.

279. Where a written contract provides that if the vendee fails to make any payment as therein specified the vendor shall be entitled to possession again, and that the agreement to sell shall be void, and contains no provision giving the vendor the right to retain as a forfeiture all the money he has received on the contract, the vendor would be bound to account to the vendee for the moneys already received, deducting a fair compensation for the use of the article while in the vendee's possession, or perhaps, at his option, the interest on the price for that period as well as for any reduction in value beyond that arising from its legitimate use and for any incidental expenses in regaining possession: *Preston v. Whitney*, 23 M. 260.

280. Whether it would have been competent to provide in such a contract for the forfeiture of all the several instalments which might have been paid before the default, or whether such a provision would be treated as a penalty, according to the principles which distinguish penalties from stipulated damages, *quere: Ibid.*

281. If a sale—as here, of a span of horses—is merely conditional and by way of

security, the vendor retains an interest subject to levy and sale: *McMillan v. Larned*, 41 M. 521.

VI. SALES ON TEST OR APPROVAL

282. A town contracted for a wind-pump and was to have six months in which to test it, and if at the end of that time the pump should be accepted its proper working for a specified period was guaranteed. The contract further provided that, "if the aforesaid wind-engine shall be erected in the manner and perform the work as set forth in this article," the town should pay a stated sum at a specified time. *Held*, that the last clause was not independent, and the first did not relate merely to the guaranty, but the town had six months in which to determine whether to accept the pump or not, whatever its merits: *Cole v. Homer*, 53 M. 438.

283. A village agreed to purchase a steam fire-engine, to be delivered on the cars at the place of manufacture, the first instalment of the purchase price to be paid when the property was accepted, the title being reserved to the vendor until full payment. *Held*, that the contract contemplated an inspection, examination and trial of the engine before acceptance; that the "delivery on the cars" was not intended to close the sale, and that the village was not to pay for the engine unless it saw fit to accept it: *Mansfield Machine Works v. Lowell*, 62 M. 546.

284. A man was to give his note for a harvester which he had ordered in writing, and was to pay it if the machine fulfilled the warranty; if not, he was to return the harvester. The warranty clause contemplated an actual trial, which was had with unsatisfactory results. When the machine was delivered the note had not been given nor required. *Held*, in an action for damages for refusal to deliver the note, that the buyer was not bound to give it if the machine did not correspond to his order: *Sherwood v. Hecox*, 35 M. 202.

285. A proposal to put up certain machinery contained the clause "no pay until tested and in perfect running order." *Held*, that this made it merely an agreement for putting the machinery in position to be tested as a preliminary to the liability to retain or pay for it: *Bell v. Harvey*, 50 M. 59.

286. The proposition to make a conditional sale in order to have a new machine tested is one which the vendees are entitled to regard as continuing unless in some way notified to the contrary: *Gurney v. Collins*, 64 M. 458.

287. A contract for the purchase of a machine, if it is "satisfactory or does what is claimed for it," is binding if the machine meets the warranty, whether the purchaser is satisfied or not: *Clark v. Rice*, 46 M. 808.

288. A harvesting machine was sold to a man who exacted a stipulation that the sale should be inoperative if the machine did not work to the buyer's satisfaction. *Held*, that he had an absolute right to reject the machine, and that his reasons for doing so could not be investigated: *Wood Reaping, etc. Machine Co. v. Smith*, 50 M. 565.

289. Where a contract of sale stipulates that the article shall do good work and give satisfaction, the vendee is not obliged to keep it if it does not give satisfaction, even though it does good work: *Plano Manuf. Co. v. Ellis*, 68 M. 101.

290. Goods left on trial under an agreement that if they prove satisfactory they shall be paid for by note due on a certain date, or by cash that day, remain the vendor's and at his risk until such date if not accepted before: *Pierce v. Cooley*, 56 M. 552.

291. Where a contract for the sale of a machine includes a provision that "the purchaser shall be allowed — days' use to give the machine a fair trial, and if it should not work well immediate notice must be given," etc., the period allowed does not begin to run until the machine is entirely out of the vendor's possession; the purchaser is entitled to the full period named in which to try it, and, if no period is named, to a reasonable time before giving notice: and the requirement of *immediate* notice must be reasonably construed in view of all the circumstances — such as business engagements, distance and facility of communication: *Wood Reaping, etc. Machine Co. v. Smith*, 50 M. 565.

292. A machine was sold subject to the vendee's approval, to be set up by the vendor's agent on a certain day. The vendee set it up without waiting for the agent, who came and made some changes in the setting up. It was afterwards returned as unsatisfactory. *Held*, that the vendee's action did not of itself operate as a breach of the contract and oblige him to take and pay for the machine, it not appearing that such action affected its working or that the vendor or his agent had made complaint of the vendee's setting it up: *Platt v. Broderick*, 70 M. 577.

See *supra*, §§ 163, 168.

293. Where a contract of sale claimed to have been made by correspondence between the parties gave the vendee the option of put-

ting it up and trying it, the vendee not to be bound if it did not do all that was claimed for it, such vendee, when sued for the price, is entitled to go to the jury upon his testimony that the article was finally and seasonably rejected; also upon the question whether the sale was absolute or conditional, if there was any testimony which could be regarded as making it absolute: *Gurney v. Collins*, 64 M. 458.

VII. BONA FIDE PURCHASERS.

294. The possession of goods, although *prima facie* evidence of ownership, is not such proof of it as to confer any equities upon third parties against the actual owner's title unless fraud exists: *Couse v. Tregent*, 11 M. 65.

As to purchase from conditional vendee, see *supra*, §§ 266, 287.

295. A purchaser's good faith is not conclusively established by his uncontradicted testimony. The question is for the jury: *Molitor v. Robinson*, 40 M. 200.

296. One who, without notice of any fraud, buys and pays for property in fair dealing with the person holding the legal title, is protected; but the consideration must in all cases be actually passed before notice: *Dixon v. Hill*, 5 M. 404.

297. A payment in good faith is needed to complete a *bona fide* purchase: *Webster v. Bailey*, 40 M. 641.

298. No one but a purchaser for a valuable consideration can claim title to property which has been fraudulently assigned against the action of an attaching creditor: *Dixon v. Hill*, 5 M. 404.

299. No one can be protected as a *bona fide* purchaser except to the extent of his payments made before he received such notice as should have prevented him from making further payments: *Kohl v. Lynn*, 34 M. 360.

300. One who buys securities that are not delivered to him, making only a nominal payment prior to his receiving notice of another's interest therein, is not entitled to protection as a *bona fide* purchaser: *Haescig v. Brown*, 34 M. 503.

301. Where a debtor has made an assignment of his property which was void on its face as to creditors, and plaintiff had bought the property of the assignee and orally agreed to pay for it at certain rates in his notes on time, but before making any payments or giving any notes the property was taken on attachment against the fraudulent assignor, it was *held* that the oral promise to pay was

not sufficient to protect the title of the purchaser against the attachment: *Dixon v. Hill*, 5 M. 404.

302. Where the vendee gives in part payment his negotiable notes payable on time, they may be regarded as payment—seeing that they are enforceable against him—and he may hold as a *bona fide* purchaser, though his vendor sold with intent to defraud creditors: *Beurmann v. Van Buren*, 44 M. 496.

303. One who buys goods and gives his non-negotiable notes for the price is not protected as a *bona fide* purchaser, for the failure of his vendor's title would exonerate him: *Dixon v. Hill*, 5 M. 404.

Further as to *bona fide* purchasers, see FRAUD, II; NOTICE, III; RECORDING ACTS, IV, (b), (c).

VIII. BILLS OF SALE.

Construed as mortgage, see CHATTEL MORTGAGES, §§ 8-13; INSTRUCTIONS, § 133.

304. A particular instrument construed as a transfer in trust for the benefit of creditors and not as a chattel mortgage: *Iron Cliffs Co. v. Beecher*, 50 M. 486.

305. A bill of sale is invalid unless delivered: *Doyle v. Mizner*, 43 M. 332.

306. Where the vendors in a bill of sale and the vendee's representatives (the vendee being a corporation formed by the vendors) are the same persons, there can be no delivery in the ordinary sense; and the bill cannot become operative against the grantors until, in some way distinct from their signatures to it, they manifest an intent to make it so: *Doyle v. Mizner*, 40 M. 160, 42 M. 332.

307. Where a bill of sale is given as a security and there is no change of possession, the bill or a copy thereof must be filed to protect the vendee (though he takes in good faith) against the owner's other creditors: *Talcott v. Crippen*, 52 M. 633.

308. That there is no writing to evidence a sale of personalty is immaterial after proof of sale and delivery: *Adams v. Lee*, 31 M. 440. That a bill of sale does not embody the essentials of a contract so as to exclude parol evidence, see EVIDENCE, §§ 1154, 1320, 1329, 1359.

As to proof of bill of sale or contents thereof, see EVIDENCE, §§ 1127, 1189, 1959.

SCHOOLS.

I. ORGANIZATION AND CHANGE OF DISTRICTS.

- (a) *Organization.*
- (b) *Alteration.*

I. ORGANIZATION AND CHANGE OF DISTRICTS—continued.

- (c) *Division of property; adjustment of liabilities.*

II. POWERS OF DISTRICTS.

III. BOARDS AND OFFICERS.

- (a) *Election and appointment.*
- (b) *Removal.*
- (c) *Meetings, powers, duties, etc.*

IV. APPEALS.

V. ORDERS.

VI. FUNDS.

VII. TAXES.

VIII. SITES AND BUILDINGS.

IX. TEACHERS.

X. SUITS.

That certain land is within a school district is provable by parol: See EVIDENCE, § 796.

Bequest to village for high school, see TRUSTS, § 107.

Bequest to executors for establishment of school, see TRUSTS, § 121.

I. ORGANIZATION AND CHANGE OF DISTRICTS.

(a) *Organization.*

1. The policy of limiting primary school districts to nine sections of land has always been uniform. The only mode permitted by statute of dealing with unorganized territory is to divide it into ordinary primary districts: *Simpkins v. Ward*, 45 M. 559.

2. Act 858 of 1877, "to incorporate the public schools of the township of Long Rapids," construed, and held to include within the new school district the territory of the unorganized county of Montmorency; and, consequently, school taxes for the district are properly levied on property within that county: *Johnston v. Cathro*, 51 M. 80.

3. Where certain township boards had created a fractional school district out of old districts, the court held that after a lapse of fifteen months it might fairly be presumed that the district had been organized, officers elected and expenses incurred, and refused to review the action of the boards on *certiorari* brought at so late a day, neither the district nor its officers being parties to the proceeding. But in such case the legality of the organization may be tried by *quo warranto*: *Owosso Fractional School District v. School Inspectors*, 27 M. 8.

4. Where the organization of a school district is undertaken by the proper body of electors or officers under a valid statute, every presumption is made in favor of the regu-

larity of their action; and such organization is regarded as entitled to legal standing unless speedily assailed by some competent authority. Where an appeal is granted it must be lawfully prosecuted; and where there is no appeal the courts will not enlarge their remedies to interfere on formal grounds with existing corporate bodies provided for by law. The same rule that recognizes the rights of officers *de facto* recognizes corporations *de facto*: *Clement v. Everest*, 20 M. 19.

5. Where a school district has assumed to possess and exercise all the rights and franchises of a regularly-organized corporation for thirteen years with entire acquiescence, its organization will be presumed regular; and neither its regularity nor that of the legislation under which the district has acted will be liable to be called in question thereafter in a merely private and collateral suit: *Stuart v. Kalamazoo School District*, 80 M. 69.

6. Where the organization of a union school district has been claimed, the presumption arising from its user of corporate powers must be that of such an organization as the user indicates: *Ibid.*

7. Where a school district had enjoyed its franchises for five years, during most of which time proceedings to inquire into the validity of the organization had been pending by *quo warranto* and writ of error instead of the speedier statutory process of appeal, the supreme court declined to review its organization on technicalities: *Lord v. Every*, 38 M. 405.

8. Where a school district has exercised franchises and privileges as such for more than two years, it is presumed to have been legally organized (H. S. § 5037), and the organization cannot be questioned at law or in equity: *Everett School District v. Wilcox School District*, 68 M. 51.

9. The regularity of the action of school inspectors in creating or changing school districts will not be examined collaterally in a proceeding to restrain collection of school taxes: *Clement v. Everest*, 20 M. 19.

10. The legal organization of a school district actually exercising its corporate powers cannot be collaterally questioned in contesting a title based on a school tax: *Stockle v. Silsbee*, 41 M. 615.

That *certiorari* to the assessor is not the proper method for inquiring into organization, etc., see *CERTIORARI*, § 34.

Certiorari to review proceedings for formation of district will not be sustained if after its issue it has been allowed to sleep until organization has been completed, etc.: See *CERTIORARI*, § 67.

(b) Alteration.

11. Where a city was incorporated of territory that formed part of a school district, and the charter provided for a board of city school inspectors, it was *held* that the effect was to sever from the school district the territory included in the city, without in any other respect depriving the district of any legal rights: *Saginaw v. Saginaw School District*, 9 M. 541.

12. Under the statute of 1840 (see H. S. § 5038) empowering the school inspectors of any township "to divide the township into such number of school districts, and to regulate and alter the boundaries of said school districts, as may from time to time be necessary," they might dissolve one organized district and annex it to another: *People v. Davidson*, 2 D. 121.

13. The township board of school inspectors has no power to dissolve a school district created by special act of the legislature, and to set back the territory into the districts from which it was taken; and the board will be enjoined from enforcing proceedings for such dissolution: *Oshemo School District v. Dean*, 17 M. 223.

14. School inspectors have no authority to divide up and destroy a district without the consent of a majority of the resident taxpayers; nor, without such consent, can they destroy it by cutting it up into pieces and attaching all the territory to other districts: *Briggs v. Borden*, 71 M. — (June 22, '88).

15. At a special school-district meeting to vote upon a proposition to dissolve the district fourteen votes were cast in favor of dissolution and nine against it. Every person present qualified to vote at any school meeting was allowed to vote, whether a tax-payer or not, and without reference to sex. Ten or more persons who were not tax-payers voted, most of them for the proposition. Some of the legal voters of the district were not present, and some of those present did not vote. *Held*, that the consent of a majority of the resident tax-payers had not been obtained, as required by H. S. § 5041: *Ibid.*

16. A vote taken to "disband" a school district is supported by a notice of a meeting to vote upon a proposition to "dissolve" it; the words are of similar import: *Ibid.*

17. A resident tax-payer can file a bill to restrain the board of school inspectors from selling a school-house, etc., under color of a void attempt to dissolve the district: *Ibid.*

18. The board of school inspectors has power to detach territory from one district and attach it to another, unless such action

would practically destroy the district; and it may afterwards, with the consent of the remaining tax-payers, consolidate the whole territory left with another district (if such district also consents through its tax-payers), although by so doing the provisions of H. S. § 5041, forbidding consolidation without consent, etc., are evaded: *Dozey v. Martin School Inspectors*, 67 M. 601.

19. Township boards of school inspectors cannot detach territory where the lands therein had been taxed for building a school-house within three years without the consent of the tax-payers; nor does it render their action legal that the territory detached was not at the same time attached to another district: *Coulter v. School Inspectors*, 59 M. 391.

20. The validity of the action of school inspectors in changing the boundaries of school districts is not affected by the fact that the inspectors were interested parties as tax-payers and residents; the disabling doctrine does not apply to those administrative acts which are public and not with or between private parties: *Clement v. Everest*, 29 M. 19.

21. Township school inspectors cannot enlarge a graded school district by adding unorganized territory, though they may, with the consent of the trustees, transfer to its jurisdiction territory previously organized into primary districts: *Simpkins v. Ward*, 45 M. 559.

22. Notice of the meeting of inspectors to change the boundaries of districts and of the object of the meeting must be given in strict compliance with the statute, and no business inconsistent with the notice is lawful: *Passage v. Williamstown School Inspectors*, 19 M. 330.

23. The notice required by H. S. § 5040, amended by act 82 of 1883, to be given of a meeting of township board (or boards) of school inspectors to alter the boundaries of a district, is jurisdictional; and before action is taken proof of the posting, in the time and places specified in the statute, must be filed with the clerk of the board: *Coulter v. School Inspectors*, 59 M. 391; *School District v. Martin School Inspectors*, 63 M. 611.

24. The detaching of lands from two separate school districts and attaching them to another district may be included in one notice, and acted upon separately at one meeting of the board of school inspectors: *Dozey v. Martin School Inspectors*, 67 M. 601 (Nov. 10, '87).

25. Where there has been actual notice of proposed proceedings by joint boards for the formation of a new school district out of several old ones, mere informalities in the issue of such notice are not jurisdictional defects;

nor is the fact that it covers territory not actually taken: *Parman v. School Inspectors*, 49 M. 63.

26. An abuse of the discretion vested in the township board of school inspectors to divide the township into school districts cannot authorize the courts to interfere: *People v. Davidson*, 2 D. 121.

27. The discretionary powers of the board of school inspectors in arranging school districts, and of the town board on appeal, cannot be reviewed by the courts: *Brody v. Penn Township Board*, 32 M. 272.

28. The regularity of the action of school inspectors in creating or changing school districts will not be inquired into in a collateral proceeding. Their action is the exercise of a public discretionary power, which can only be reviewed, if at all, by some direct appellate process authorized by law and operating upon the proceedings themselves to affirm, reverse or change them: *Clement v. Everest*, 29 M. 19.

(c) *Division of property; adjustment of liabilities.*

29. Where territory forming part of a school district is incorporated as a city under a charter providing for a city board of school inspectors, the city, without special legislation, has no remedy to recover its proportion of the school district moneys or other property; the statute concerning cases where a school district is divided, or a part of one school district is set off to another by a board of school inspectors, does not apply: *Saginaw v. Saginaw School District*, 9 M. 541.

30. A valuation and apportionment made at a meeting not preceded by the statutory ten days' notice posted, etc. (as required prior to 1881), held void; and held that the old school district could maintain a bill in its own name to enjoin a tax to satisfy the amount so apportioned as its share: *Everett School District v. Wilcox School District*, 63 M. 51.

31. Whether a board of school inspectors is competent to fix the amount to be paid by a district for school property which it retains when another district is set off from it, so long as the actual ownership of the property is in doubt, *quere*: *Pine School District v. Wilcox*, 48 M. 404.

32. A finding made by the township board of school inspectors, where changes had been made in the school districts, fixing each district's credits with the treasurer, will not be changed on *mandamus* after acquiescence for four years and a half, there being no proof of illegality, unfairness or clandestine conduct.

The concerns of school districts will not be interfered with except on things of substance: *School District v. Riverside*, 87 M. 404 (Oct. 27, '87).

33. When a new district is formed by the union of two or more districts, the new district becomes thereby entitled to the credits and property and liable for the debts of the districts so united: *Brewer v. Palmer*, 13 M. 104; *Halbert v. Watertown School Districts*, 36 M. 421.

34. The erection of a new township will sever it from a school district of which it was before a part, and it will not be liable for the school district debts under any general provision of the law: *People v. Ryan*, 19 M. 203.

35. Where a school district is parcelled out among three other existing districts, the latter cannot be held jointly liable for a debt of the former district; whatever they are bound to pay must be a several and not a joint obligation: *Halbert v. Watertown School Districts*, 36 M. 421.

36. Where a part of the territory of a district is cut off and erected into a new district, or attached to another district, the debts of the divided district cannot be parcelled out by the courts so as to give creditors a remedy against any but the divided district. A debt once existing remains a debt against the corporation that created it, and its obligation is not destroyed by a change in corporate limits. If contribution is required it must be obtained by the corporation and not by its creditors, unless otherwise provided by law: *Turnbull v. Alpena School District*, 45 M. 496.

37. Where a statute creating two new school districts in territory taken from an old one which was thus left with smaller limits provided that the old district should be primarily liable on its previous orders, and that the others should pay their proportion to it, a holder of such an order cannot enforce by *mandamus* the collection thereof against a district that refuses to contribute: *Maltz v. Wilson Board of Education*, 41 M. 547.

38. Where, on the formation of two new districts from part of the territory of an old one, the district boards neglected to perform their statutory duty to adjust the proportion of debts and credits, the old district will nevertheless be compelled by *mandamus* to pay order issued by it before the division: *Turnbull v. Alpena School District*, 45 M. 496.

II. POWERS AND DUTIES OF DISTRICTS.

39. School districts are municipal corporations: *Marathon School District v. Gage*, 89

M. 484; *Seeley v. Port Huron Board of Education*, 39 M. 486; *Everett School District v. Wilcox School District*, 63 M. 51. So are the boards of education of Detroit and Port Huron: *Board of Education v. Detroit*, 80 M. 503; *Tibbals v. Port Huron Board of Education*, 89 M. 635.

40. In so far as the laws creating union school districts in the cities and larger villages establish special regulations for them, or confer special or enlarged powers, they are removed from the control of the general primary school law; but in all other particulars that law controls them: *People v. Detroit Board of Education*, 18 M. 400.

41. A school district is competent in its corporate capacity to take and hold money bequests in trust for the maintenance of a public library for the use and benefit of all persons residing within the district: *Maynard v. Woodward*, 36 M. 423.

42. Where a village is by statute enabled to erect a school-house from moneys bequeathed, it may be authorized to use the aid of the school district in which it lies to carry out such purpose: *Hathaway v. New Baltimore*, 48 M. 251.

43. Where a statutory limit of the amount of bonds that a district may issue is \$3,000, and the district is already bonded for \$2,700, a vote to issue bonds to the amount of \$780 in settlement of a demand will be sustained up to the legal limit, and the issue of bonds will be restrained for the excess only: *Stockdale v. Wayland School District*, 47 M. 226.

44. Action by a school district that can only be taken by a two-thirds vote cannot be rescinded by a bare majority: *Ibid*.

45. A school district in its annual meeting may authorize payment of equitable claims against it, notwithstanding such payment could not legally be enforced. Thus, it may vote to reimburse a contractor who has sustained loss in performing his contract for building a school-house: *Ibid*.

III. BOARDS AND OFFICERS.

Collection of costs awarded against, see COSTS, § 272.

(a) Election and appointment.

46. One for whose sole benefit an undivided interest is held in fee by another in trust absolute appearing on the conveyance is a freeholder so as to be eligible under act 37 of 1877 to the office of school trustee in Grand Rapids: *Godwin v. Grand Rapids Board of Education*, 88 M. 95.

47. An annual city election is not a school-district meeting, and the primary school laws are inapplicable to such elections. Hence, H. S. § 5049, prescribing who shall be voters at such meetings, does not enable women to vote for members of the board of education at the annual election of the city of Hastings: *Mudge v. Jones*, 59 M. 163.

48. There is no legal sanction for taking informal ballots at a regular election of school-district officers: *Tallmadge School District v. Root*, 61 M. 873.

49. The board of education of Grand Rapids has no power to go behind the statements of election of its members, but must receive those whose election is certified by the board of canvassers: *Godwin v. Grand Rapids Board of Education*, 38 M. 95.

50. A. and B. claiming to have been elected school-district moderator, judgment by default was entered in A.'s favor, and the next day the assessor and director, assuming that there was a vacancy, appointed C. moderator, who thenceforth acted as such — A. not applying to the other members of the board for recognition, and never assuming the duties of the office. Held that, on an application to compel payment of warrants countersigned by C., the latter must be treated as acting moderator: *Tallmadge School District v. Root*, 61 M. 873.

Parol proof admissible to show who are officers: See EVIDENCE, § 1168.

(b) Removal.

51. The members of the board of education of Port Huron hold office for specific terms, and are not city officers removable by the common council: *Tibbals v. Port Huron Board of Education*, 39 M. 635.

52. The provision of C. L. 1871, § 3693, for the removal of school-district officers from office by the township board, applies, as to district officers, only to school districts situated wholly within the limits of a single township; and the power of removal lies only with the township board of that township: *Crawford v. Township Boards of Scio and Webster*, 24 M. 248.

53. The supreme court cannot supply the omission by the legislature to confer this power upon the joint boards, where the district is organized from two or more adjoining townships: *Ibid.*

54. Where two township boards sit together as a single joint board for the removal from office of a director of a school district embracing a part of each township, and their proceedings are brought up for review on a writ of *certiorari*, the return to which purports to

be the return of the two boards as a joint board, and discloses that they acted jointly in the hearing and determination of the case, this is sufficient to show that their action was without jurisdiction and void: *Ibid.*

55. Where a proceeding to remove the moderator of a school district for his persistent refusal to countersign an order drawn by the director upon the assessor was taken before the township board sitting with but three members, of whom the payee in such order was one, it was held that such proceeding was in the nature of a judicial investigation, that the payee was an interested party, and therefore incompetent to act, and that his presence, being essential to a quorum, rendered the proceeding void: *Stockwell v. White Lake*, 23 M. 841.

56. Proceedings to remove a school director for refusing to recognize the validity of a teaching contract were taken by a township board, one of the members of which was related to a third person who had a contract subject to the same objections. Held, that this did not legally disqualify the member from acting on the case actually before the board: *Hamtranck v. Holihan*, 46 M. 127.

57. H. S. § 5170 does not authorize the township board to remove the moderator for hiring her husband to teach the district school and agreeing to pay him more than is necessary to secure a better teacher: *Hazen v. Akron Town Board*, 48 M. 183.

58. Nor does it cover a charge of conspiring with a woman moderator so to hire her husband, etc.: *McLaren v. Akron Town Board*, 48 M. 189.

59. The wilful refusal of a school director to sign a contract made with a teacher, or to accept and file it, or draw orders for the teacher's pay while it is pending, and his obstinate neglect to furnish necessary school-house supplies, may be taken into account in proceedings for his removal: *Geddes v. Thomastown*, 46 M. 316.

60. Proceedings by a township board to remove a school director cannot properly be taken until the action of the proper authorities has been invoked by complaint of some definite violation of duty; but where the respondent admits the charges set up against him and expressly desires the board to act on them without further delay, he cannot afterwards complain that they did so: *Ibid.*

61. Proceedings by a township board to remove a school director are not invalidated by the fact that it did not meet to agree on the notice under which the proceedings were taken: *Wenzel v. Dorr*, 49 M. 25.

62. In proceedings under the statute to remove a public officer upon charges, evidence of acts performed by the accused as "Moderator of School District No. 1," is not admissible to prove a charge against him as "Moderator of School District No. 2;" and when, on the trial of an information for falsely assuming to act as moderator of school district No. 1, evidence has been produced of the proceedings before the township board to remove him upon charges recorded against him as moderator of school district No. 2, it is not admissible to show that the record was a mistake, and that the charges were actually preferred against him as moderator of No. 1: *Hull v. People*, 21 M. 456.

63. The action of the township board in removing a school-district officer is in its nature judicial, and must be in writing: *Ibid*.

64. The action of a town board in removing a school director is final unless speedily brought up for review: *Geddes v. Thomas-town*, 46 M. 816.

65. The township board is exclusive judge of the facts on which it is authorized by H. S. § 5170 to remove a school director, and its proceedings can only be reviewed by the courts on questions of law: *Hamtramck v. Holihan*, 46 M. 137.

That removal is reviewable on *certiorari* from circuit court, see *CERTIORARI* § 142.

As to costs on review of removal proceedings, see *COSTS*, § 279.

(c) *Meetings, powers, duties, etc.*

66. The convening of the board is necessary for the legal transaction of official business: *Hazen v. Lerche*, 47 M. 626.

67. The statutory notice of meetings by inspectors must be given, stating the object of the meeting. And no business at a meeting inconsistent with the notice is lawful: *Passage v. Williamstown School Inspectors*, 19 M. 330.

68. Notice of a meeting of the board of school inspectors to change a school-house site is necessary: *Andress v. Williamstown School Inspectors*, 19 M. 332.

69. The notice required by statute of a meeting of inspectors to alter district boundaries is essential to the validity of their action: *Coulter v. School Inspectors*, 59 M. 391; *School District v. Martin School Inspectors*, 63 M. 611.

70. Failure to give the ten days' notice by posting required (prior to 1831, see S. L. 1867, p. 79; S. L. 1873, p. 81) of a meeting of a district board avoided action apportioning the

valuation of school property on the formation of a new district: *Everett School District v. Wilcox School District*, 63 M. 51.

71. Whether any adjournment of a board of school inspectors except from day to day to conclude current business is lawful, *quere*: *Passage v. Williamstown School Inspectors*, 19 M. 330.

72. The district board can make no regulations that would exclude any resident of the district from any of its schools because of race, color or religious belief, or personal peculiarities; and H. S. § 5070 in this regard applies to the union school districts of the state except so far as the special legislation creating them is inconsistent: *People v. Detroit Board of Education*, 18 M. 400.

73. The city of Detroit is not entirely exempted from the operation of the general school laws, but is subject to such of their provisions as are not inconsistent with the special legislation regulating the city schools; and, therefore, H. S. § 5070 precludes the board of education from excluding a child from any public school on the ground of color: *Ibid*.

Father a competent relator to compel admission in such case, see *MANDAMUS*, § 288.

74. The right of school authorities in union school districts to levy taxes upon the general public for the support of high schools, and thereby make free the instruction of children in foreign languages, sustained: *Stuart v. Kalamazoo School District*, 30 M. 69.

75. The educational policy of Michigan from 1817 until after the adoption of the constitution of 1850 reviewed; *held*, that the primary school districts of the state are not restricted as to the branches of knowledge which their officers may cause to be taught or the grade of the instruction that may be given, nor prevented from giving instruction in classics and the living foreign languages, if their voters consent in regular form to bear the expense and raise the taxes for the purpose: *Ibid*.

76. The board of trustees of a graded school district may cause music to be taught, and has authority to purchase a piano for the purposes of a high school: *Knabe v. West Bay City Board of Education*, 67 M. 262.

77. The moderator, director and assessor have no common-law powers or rights, but are strictly confined to such as the statutes confer; and prior to 1859 (see H. S. § 5078, subd. 8) they were not entitled to compensation for their services, there being no statutory authority for payment: *Hinman v. School District*, 4 M. 168.

78. Where the law gives a district board full control over the schools of a union school

district it has power to appoint a superintendent of schools: *Stuart v. Kalamazoo School District*, 30 M. 69.

79. School boards are not required to keep any particular kind or number of corporate books (see *infra*, § 150): *Holloway v. Ogden School District*, 62 M. 153.

80. Charges for tuition of non-resident pupils cannot be collected in the absence of any resolution fixing the rate. Such rate must be fixed by resolution of the district board, which must be duly recorded, and which is provable by the record only: *Thompson v. Crockery School District*, 25 M. 483.

81. Prior to the enactment of H. S. § 5050, expressly requiring it, it was held competent for the district board to purchase at the expense of the district such record books, blanks and papers as were necessary for the use of the district and the proper keeping of its records, without any previous vote of the district therefor: *Easton School District v. Snell*, 24 M. 350.

82. The requirement (see H. S. § 5078) that a school director shall provide the necessary appendages for the school-house would not authorize him to purchase charts for use in the school-room without the vote of a district meeting. Such an unauthorized purchase would create no liability against the district; nor would the director's retaining the charts, occasionally placing them in the school-house, operate as a ratification by the district: *Gibson v. Vevay School District*, 36 M. 404.

83. A line fence was held to be a "necessary appendage" for a school-house within the meaning of H. S. § 5073, subd. 6; and the director had power to contract for the building of it, and the district was liable: *Creager v. Wright School District*, 63 M. 101.

84. C. L. 1871, § 3618 (see H. S. § 5078), in providing that the school director shall keep the necessary school-house furniture in due order and condition, and that his expenses shall be subsequently audited and paid, does not intend that money must be put into his hands beforehand: *Hamtramck v. Holihan*, 46 M. 127.

85. A township school director has authority, in the exercise of a sound discretion, to buy new seats for a school-house under a resolution, adopted at the annual meeting of the school district, "that the school board fix the school-house ready for the winter term:" *McLaren v. Akron*, 48 M. 189.

86. Where, by a school-district officer's wilful act or neglect of duty, the district has been subjected to suit and judgment against it, a private citizen who has been assessed and

has paid his share of the tax cannot recover from the officer the amount of the tax so paid; such recovery must be had by the district: *Wall v. Eastman*, 1 M. 266.

Whether school officers are liable for failure to take bond from contractor, see OFFICERS, § 180.

IV. APPEALS.

87. A township board has jurisdiction of appeals from decisions of the board of school inspectors fixing the amount to be paid by an old school district to a new one where the latter comprises part of the same territory and the former retains the school property: *Pine School District v. Wilcox*, 48 M. 404.

88. Under C. L. 1871, §§ 3734-5, providing for appeals from the board of school inspectors to the township board, the approval of the appeal bond is essential to complete an appeal; and the fact that the clerk of the board of inspectors refused to approve it because it was not witnessed, even though his objections were frivolous, vexatious, and made in bad faith, will not render the bond sufficient without an approval, as, under the statute, it may be approved also by any justice of the peace of the township: *Clement v. Everest*, 29 M. 19.

89. Parties appealing to the town board from the action of the inspectors in arranging school districts thereby waive those questions which require judicial review and submit themselves to the discretion of that body; and a *certiorari* to the town board does not open for review the doings of the inspectors: *Brody v. Penn Township Board*, 32 M. 272.

90. Where, on such an appeal, the township board acted within its jurisdiction, its discretion is not reviewable by the courts; and if it did not, and its acts were void, then, under the statute, the action of the inspectors, after ten days, is equally intact and beyond disturbance: *Ibid*.

91. If the town board, acting without authority, reversed the inspectors' action, it might be necessary to neutralize their order; but if they affirmed it, whether properly or not, it is left where it would have been without interference: *Ibid*.

92. No appeal from action of inspectors ascertaining proportion of valuation, etc., after alteration of districts, is necessary where such action was void for want of the statutory notice: *Everett School District v. Wilcox School District*, 63 M. 51.

V. ORDERS.

93. A showing of a want of funds is a complete answer to an application for a *mandamus*

to require an assessor of a school district to pay a warrant drawn on him in favor of a school teacher: *Allen v. Frink*, 82 M. 96.

Further as to *mandamus* to compel payment, see *supra*, §§ 87, 83; *MANDAMUS*, § 212.

94. Where the moderator and assessor of a school district are sued upon an order signed by them, a finding that it was signed on a false and fraudulent statement that the school director approved and would sign it, and on condition that it should be of no force unless he did sign it, and the further finding that there was no purpose to contract except for the district, defeats an action thereon in the absence of any showing of subsequent action creating contract relations, or of any action by defendants taken with a knowledge of the facts and estopping them personally: *Kane v. Stowe*, 50 M. 817.

95. A sale of genuine school orders implies no warranty of the officers' authority to issue them: *White v. Robinson*, 50 M. 73.

As to interest on school-district orders, see *INTEREST*, §§ 41, 42.

Parol proof admissible of payment upon orders, see *EVIDENCE*, § 1150.

That promise to pay is implied when order wrongfully obtained has been used as money, see *ASSUMPSIT*, § 25.

VI. FUNDS.

96. Const., art. 18, § 2, which provides that the income of the primary school fund shall be appropriated annually to the specific object for which the fund exists, does not deprive the legislature of the power of regulating, from time to time, the state policy regarding the primary school lands as shall be deemed proper: *Jones v. State Land Office Commissioner*, 21 M. 236.

That the act of 1857 setting apart seventy-five per cent. of the proceeds of swamp-lands for the primary school fund did not constitute such an appropriation of the lands to educational purposes as to place them, under Const., art. 18, § 2, beyond legislative control, see *PUBLIC LANDS*, § 176.

As to sale and disposal of school lands, see *PUBLIC LANDS*, VI.

As to the statute entitling the school fund to escheated lands, see *ESTATES OF DECEDENTS*, §§ 480-483.

97. Const., art. 14, § 1, provides that certain revenues shall be applied to paying the interest upon educational funds and the interest and principal of the state debt "until the *extinguishment* of the state debt," when they shall constitute a part of the primary

school interest fund. *Held* that, for the purposes of the requirement, the debt is to be considered "extinguished" when there is money enough in the state treasury not subject to other claims to pay it, even though it has not matured and has not been actually paid: *Auditor-General v. State Treasurer*, 45 M. 161.

98. Where but one school district in a township is entitled to a share in the primary school interest fund, and the superintendent of public instruction certifies the apportionment accordingly, and the money is paid over to the township treasurer, no apportionment by the clerk is needed or can be made, and the treasurer must pay the money to the district assessor: *Moiles v. Watson*, 60 M. 415.

99. The treasurer of the board of school inspectors, and not the town treasurer, is the proper custodian of the township library moneys, and *mandamus* will lie to compel the town treasurer, on proper demand, to pay them over to him; and that, too, whether there is or is not a specific appropriation for which the inspectors require them: *McPharlin v. Mahoney*, 80 M. 100.

100. Where a majority of the school board has recognized a moderator, the only purpose of their action being to get the school money into the hands of the assessor, whose right is not questioned, the town treasurer should pay over unless doubtful of such moderator's identity: *Tallmadge School District v. Root*, 61 M. 378.

101. A township treasurer is bound to make payment of school moneys on a proper warrant to the extent of such moneys lawfully in his hands, and cannot refuse on the ground that his right to the custody of the remainder is disputed: *Bryant v. Moore*, 50 M. 225.

102. The liability of the township treasurer to pay the amount of taxes raised for school purposes to the order of the school-district officers is distinct from his ordinary liability for township moneys, and cannot be released or in any way affected by the action of the township board in any settlement between him and it: *Jones v. Wright*, 84 M. 371.

103. The assessor of a school district is the lawful treasurer and depositary of school-district funds, and all moneys must pass through his hands and be paid out by him on proper orders: *Burns v. Bender*, 86 M. 195; *Midland School Districts*, 40 M. 551.

104. The township treasurer can pay school moneys only to the school-district assessor, and then only on the warrant of the proper district officers: *Ibid*.

105. Where the township treasurer paid,

without a warrant, school money to the assessor, who disbursed it without a warrant to pay a teacher who had a valid claim against the district, it was held that the district was not precluded from holding him liable for the amount: *Burns v. Bender*, 36 M. 195.

106. One who has occupied the double position of moderator of a school district and town treasurer is not thereby authorized to set up his previous illegal disbursements of the district moneys as treasurer, as an excuse for not doing his duty as moderator; his double functions will not relieve him in one capacity from doing his duty in the other: *Ibid*.

107. A warrant drawn upon the township treasurer by the director of a school district and countersigned by the moderator is not a negotiable instrument, and no action can be maintained thereon by a transferee: *Fox v. Shipman*, 19 M. 218.

108. An order drawn by the director upon the township treasurer for school money must be made payable to the district assessor, and is void if drawn payable to "A. or bearer:" *Fractional School District v. Mallary*, 23 M. 111.

109. The director is charged with the duty of seeing that school moneys are transferred from the township treasurer to the assessor within a reasonable time, and this duty is absolute: *Burns v. Bender*, 36 M. 195.

110. The moderator is bound, under ordinary circumstances, to countersign all orders of the director for that purpose; and if he refuses in a proper case to do so, *mandamus* lies to compel him. In such proceeding by *mandamus* the director is a proper relator; whether the assessor would be, *quere: Ibid*.

111. The duty of a moderator of a school district to countersign an order drawn by the director upon the assessor is not merely ministerial. He has a right to satisfy himself that the director drew it for a valid claim and in the proper performance of his duty: *Stockwell v. White Lake*, 22 M. 341.

112. A school-district assessor is chargeable with notice of his successor's election and of the latter's acceptance; and he cannot, on any claim that he is personally entitled to official notice of these facts, withhold the district funds from such successor when the latter has to make proper demands for them after qualifying for office: *Mason v. Fractional School District*, 34 M. 228.

113. A school district can sue its assessor on an action for money had and received by him, but which at the expiration of his term he has refused, on demand, to pay over to his successor; an action upon the assessor's bond

is not the only remedy; the bond is required as additional security, but it does not supersede the assessor's individual responsibility: *Ibid*.

114. School moneys are distinguishable on the tax-rolls, and when received by the treasurer of a municipal board of education are at once payable to the proper depository without waiting for the comptroller to formally apportion and separate the various taxes paid by the collector to the treasurer: *Port Huron Board of Education v. City Treasurer*, 57 M. 46.

115. The treasurer of a municipal board of education cannot go back of board records which on their face show valid action for the purpose of avoiding the performance of his duty to deposit the funds paid to him with the custodian who appears by the records to be entitled to them: *Ibid*.

116. The city charter of Lansing (title 15, § 4) leaves the school funds in the city treasurer's keeping, to be paid out by him to the treasurer of the board of education "on the order of said board;" whether payment without the board's order is valid, *quere: Lansing v. Wood*, 57 M. 201.

117. And as to the effect of a transfer of such funds by the city treasurer to his successor by means of certificates of deposits, *quere*; such transfer may be ratified by the city: *Ibid*.

VII. TAXES.

118. A school district has no power to levy a tax except for the purposes specified by statute: *Hinman v. School District*, 4 M. 168.

119. A tax sale is void if the taxes include school taxes not authorized by any recorded vote of the school district for which they are levied; and where the record of a district showed the voting by the electors of only \$180 for a given year, and there was no record of any increase by the district board, and the sum of \$340 was levied by the supervisors upon the property of the district, held, that a tax-title based upon a sale for that year's taxes was void: *Burroughs v. Goff*, 64 M. 464.

120. Mill-tax for township library and school purposes is not to be blended on the roll with that of state, county and township taxes: *Case v. Dean*, 16 M. 12.

121. School taxes enrolled upon the wrong roll are void: *Folkerts v. Power*, 43 M. 283.

122. A township treasurer has no right to receive for school moneys anything which the law has not authorized to be so received; and if he chooses to do so and to receipt for the

taxes, he must make good the amount: *Jones v. Wright*, 34 M. 371.

123. Lands might be sold for delinquent school taxes under the school law of 1843: *Tweed v. Metcalf*, 4 M. 579.

That school district may file bill to restrain tax based on void apportionment, see *supra*, § 30.

124. Where an injunction is asked to restrain the collection of a school tax irregularly assessed, the school district is a necessary party; but where it had been omitted, and the tax was found to be absolutely illegal, it was held sufficient to add the district as a formal party before entering the final decree: *Folkerts v. Power*, 42 M. 283.

125. Injunction lies to restrain the sale, for school taxes, of lands unlawfully included within the taxing district: *Simpkins v. Ward*, 45 M. 559.

126. For a case where a school district was allowed to maintain a bill against another district for an account of taxes belonging to complainant, see *Oshtemo School District v. Dean*, 17 M. 223.

As to action by tax-payer to recover from moderator, see *supra*, § 86.

VIII. SITES AND BUILDINGS.

127. The jurisdiction to condemn lands for a school-house site is invoked by presenting to the proper officer a petition designating the site and showing disagreement with the owner as to compensation for it: *Smith v. Milton School District*, 40 M. 143.

128. Proceedings to condemn land for a school-house site will be quashed if there is no lawful designation thereof shown by the records: *Heck v. Essex School District*, 49 M. 551.

129. H. S. ch. 196 permits land to be condemned for school purposes only when a site has been lawfully determined, and it confines the power of the township inspectors to determine the site to cases where the inhabitants themselves cannot do it. And it seems that more than one site cannot be designated except by the inhabitants: *Ibid.*

130. Where the petition, notice, venire, finding and commissioner's certificate in proceedings to condemn land for a school-house site are regular on their face, and show full compliance with statutory requirements, the proceedings are presumed regular; and if the parties interested were represented, and omit, on filing the proceedings, to make a sworn showing to the circuit court of any other defects — such as an omission to designate the

site to the jury — they cannot rely on it thereafter: *Smith v. Milton School District*, 40 M. 143.

131. Where the owner of land that is sought for a school-house site is represented at the proceedings to condemn it, he is deemed to waive objection to jurors if he does not challenge them at the time: *Ibid.*

132. The justice to whom a petition for the condemnation of land for a school-house site is presented is not empowered to hear evidence or pass on any of the merits: *Heck v. Essex School District*, 49 M. 551.

133. In proceedings to condemn land for a school-house site, the circuit judge is not required to act in preference to a circuit court commissioner: *Smith v. Milton School District*, 40 M. 143.

134. Where proceedings to condemn land for a school-house site are brought before a jury, proof of a legal selection of the site must be made to them, and without it they cannot find it to be necessary to condemn it: *Heck v. Essex School District*, 49 M. 551.

135. Where the circuit judge, because of irregularities, has refused to enter judgment against the school district for the amount assessed by jury for condemnation of land for a school-house site, such entry will not be compelled by *mandamus*: *Delhi School Dist. v. Ingham Circuit Judge*, 49 M. 432.

136. A lease of land to a school district to hold "during the time it is used for school purposes" creates a base fee, and satisfies the statute requiring a title in fee or a lease for ninety-nine years where land is to be secured for building a stone or brick school-house: *Delhi School District v. Everett*, 52 M. 314.

137. The board of inspectors has no power to change a school-house site on a written request of a majority of qualified voters of the district except in cases where the site has been fixed by it because the inhabitants were unable to agree upon a site: *Andress v. Williamstown School Inspectors*, 19 M. 332.

138. A district contracting with a builder for the erection of a school-house is bound to provide a site for the same within such reasonable time as will allow the builder to perform his contract: *Todd v. Greenwood School District*, 40 M. 294.

139. Where the assignment of a builder's contract was recognized by the district and the time for the erection of the school-house extended to the assignee, held, that the sureties of the original contractor for the performance of the work were thereby released: *Ibid.*

As to contracts for construction of school

building, acceptance of work, etc., see **CONTRACTS**, §§ 496, 489, 525.

As to effect of failure to take bond from contractor, see **OFFICERS**, § 130.

IX. TEACHERS.

140. Where a majority of a board of school examiners has acted and refused a certificate, such action is not invalidated by the fact that an unauthorized person participated in the examination, it not appearing that he had anything to do with the failure to pass the examination: *Lee v. Alcona School District*, 71 M. — (July 11, '89).

141. Under H. S. § 5154, the secretary of a board of school examiners has no authority to issue a special certificate to a person four days after the board's refusal to grant her a certificate upon examination: *Ibid*.

142. Where the employment of an unqualified teacher is a necessity the school district is authorized to employ one who has not the proper certificate, if the board is satisfied that the teacher is otherwise qualified, and to pay such teacher out of moneys belonging to the district. But the primary school money and mill-tax cannot be used for such purpose: *Hale v. Risley*, 69 M. 596.

143. H. S. § 4969 makes a certificate from the state normal school a legal certificate, when filed, of qualification to teach. *Held*, that a failure to file such a certificate until after making a contract to teach is no defence to an action for salary earned after filing: *Smith v. Pleasant Plains School District*, 69 M. 599.

144. The district in its corporate capacity is a necessary party to a contract with a teacher, and in that capacity is bound to perform it, and is liable in damages to the teacher for its non-performance: *Wall v. Eastman*, 1 M. 268.

145. The trustees of graded public schools can make binding contracts for teaching; and the provisions in the primary school law, whereby the voters and the district board shall have full control of the schools during the entire school year, do not apply to graded schools, and cannot affect any contract for teaching made by the trustees before the year opened: *Tappan v. Carrollton School District*, 44 M. 500.

146. In an action by a school teacher on a contract of hire it was alleged as error that the contract was allowed in evidence without proof that those who acted for the school district in making it were not authorized, and that the court charged that it was valid.

Held, that this allegation did not sufficiently present the objection that the officers of the district were not competent to bind it by a contract extending beyond the current year, especially as there was evidence that the officers were in possession and presumptively competent, and there was no evidence that they were not authorized to employ teachers: *Manistee School District v. Cook*, 47 M. 112.

147. The word "approved," subscribed by the moderator as such, and written upon a contract for hiring a teacher, which had already been signed by the school-district director and the teacher, is in legal effect a signature of the contract by the moderator: *Everett v. Cannon School District*, 30 M. 249.

148. Where a teacher was hired by the director and moderator without convening the board and without consultation with the assessor or to his knowledge, the employment was *held* invalid: *Hazen v. Lerche*, 47 M. 626.

149. The moderator and director of a school district signed a teacher's contract without a meeting or resolution of the board; the teacher taught for half a term, none of the officers denying the validity of the contract, and the assessor cashed orders drawn by the other officers for the teacher's pay. *Held*, that a teacher's contract signed by a majority of the board is presumptively valid, and that the contract in this case was sufficiently ratified and confirmed: *Crane v. Bennington School District*, 61 M. 299.

150. Plaintiff's contract as teacher was entered in a book kept by the district, signed by the director and assessor, but not by the moderator. The moderator, though knowing that plaintiff was teaching, made no objection, and concurred in paying part of plaintiff's wages. *Held*, that the book was admissible as, at least presumptively, a corporate transaction; that simultaneous signing was not necessary; that plaintiff had a right to suppose his contract was a valid one when it was signed by a sufficient number of officers, and when he was, with the personal knowledge of the whole board, permitted to proceed; and that the board could not, by abstaining from holding meetings and from doing its duty, set up its own wrong in defence of an honest claim: *Holloway v. Ogden School District*, 62 M. 153.

151. A contract within the ordinary powers of a corporation is presumed valid when regularly signed, and no stronger proof is required in school matters than in other corporate agreements: *Ibid*.

152. The provision in H. S. § 5065 that a contract for hiring a school teacher shall require the teacher to keep a correct list of

his pupils, etc., imposes on him the duty of keeping the list, and becomes in legal effect a part of his contract, whether this is expressly stipulated therein or not. But the statute is directory, and the requirement may be omitted, leaving the contract valid if otherwise good: *Everett v. Cannon School District*, 80 M. 249.

153. Suspension of school by direction of the district board on account of the prevalence of small-pox is no defence to the payment of the teacher's wages during the time the school remained closed. Any interposition that will release the district from the obligation of its contract must be such as renders performance impossible: *Dewey v. Alpena School District*, 43 M. 480.

154. A school teacher whose school is discontinued in March because of the burning of the school-house is not bound to look up any other school—it being out of the season to obtain a situation as a teacher; nor need she seek work not in her vocation, but she may recover wages for the full term ending in June: *Smith v. Pleasant Plains School District*, 69 M. 589.

155. Teaching contracts for stated periods are subject to the observance of recognized holidays, and there should be no deductions for such occasions from the teacher's wages: *Marathon School District v. Gage*, 39 M. 484; *Holloway v. Ogden School District*, 62 M. 153.

156. A teacher's wages cannot be reached by garnishing the district or its officers: *Marathon School District v. Gage*, 39 M. 484.

A teacher suing for wages need not make proof of his certificate of qualification, but the granting of such certificate may be proved by parol: See PLEADINGS, § 279.

X. SUITS.

157. An action for money had and received is the only proceeding by which to liquidate a demand against a municipal corporation—as here, by one school district against another—for money belonging to plaintiff and wrongfully in defendant's possession. In such case the defendant district cannot require any strict proof of regularity of the proceedings authorizing the collection of the money: *Midland School Districts*, 40 M. 551.

158. The control of all suits by or against the district is confided to the assessor, unless other directions are given by the voters in district meeting (H. S. § 5077, subd. 5). When he is competent to act the other members of the board cannot interfere with such control. Even a majority of the voters cannot inter-

fere except through the action of a lawful meeting: *Rush School District v. Wing*, 30 M. 351.

159. Therefore, an appeal taken in the name of the district without the authority of the assessor, he being competent to act, is void; and costs should not be awarded against the district upon the dismissal of an appeal so taken, where the ground of dismissal is that the district itself had not appealed: *Ibid.*

Further as to costs against district, see COSTS, §§ 278, 279.

160. Sureties upon a building contract made with a school district were designated by the contractors to receive the payments made on the contract. The order designating them was made before the contract and bond were completed and approved by the district board, and when they were approved the order was spread upon the records. *Held*, in an action by the sureties against the district to recover the amount of a payment made directly to the contractors, that plaintiffs could fully explain their relations with the contractors, in order to show the consideration for and the extent of their rights. Also, that the fact that the order was made before the contract was completed did not render it invalid, and that spreading it upon the records was as distinct a recognition as could be made, and the board could not afterwards lawfully disregard it until it was waived or surrendered: *Howard v. Holland Public Schools*, 50 M. 94.

School districts cannot be garnished: See GARNISHMENT, § 16.

As to jurisdiction of justices, see JUSTICES OF THE PEACE, §§ 36, 39, 40.

As to interpleader by district, see EQUITY, § 346.

SEDUCTION.

- I. WHO MAY SUE; WHEN.
- II. PLEADING.
- III. EVIDENCE.
- IV. INSTRUCTIONS.
- V. DAMAGES.

As to what constitutes seduction and as to criminal prosecutions therefor, see CRIMES, III, (s), 6.

Seduction of married women, see CRIMINAL CONVERSATION.

I. WHO MAY SUE; WHEN.

1. The woman seduced, if of full age, may sue in her own name and for her own benefit; the statute (H. S. §§ 7779-7781) is an enabling,

not a restrictive, provision: *Watson v. Watson*, 49 M. 540; *Weiherr v. Meyersham*, 50 M. 602.

2. Where an infant is seduced and nobody sues for her during minority, she may bring suit in her own name at any time within six years after coming of age: *Watson v. Watson*, 53 M. 168.

3. An action for seduction will lie where the victim's will is overcome by the controlling influence of defendant's, especially if he holds a relation giving him authority over her: *Ibid*.

II. PLEADING.

4. A declaration for the seduction of plaintiff's daughter, who was of full age, alleged that plaintiff was authorized by her daughter to bring suit, and it made no claim for loss of service. *Held*, that this must be regarded as the statutory action for the injury to the daughter, and that the pleading would not permit recovery for loss of service: *Ryan v. Fralick*, 50 M. 483.

5. In a declaration on the case for damages for seduction there is no duplicity in charging in separate counts that defendant had debauched plaintiff and assaulted and got her with child by force and arms, and that he had enticed her away to make her his mistress or concubine; the latter charge explains how plaintiff came within defendant's power, and does not allege a separate cause of action, but merely matter of aggravation: *Watson v. Watson*, 49 M. 540.

III. EVIDENCE.

6. Where the action is brought by the victim's father or other relation authorized by her, there need be no proof of loss of service or of any suffering or injury except to her: *Watson v. Watson*, 49 M. 540.

7. Facts, though remote in time, showing the character and degree of intimacy of the parties, are admissible: *Threadgool v. Litogot*, 22 M. 271.

8. It is discretionary with the court to allow plaintiff, before proving the seduction, to show previous acts of improper familiarity: *Watson v. Watson*, 53 M. 168.

9. Plaintiff claimed as part of her case that she had been gotten with child at a certain time, and that the illicit intercourse was kept up for some time afterwards. *Held*, that proof was admissible of acts of previous familiarity as bearing upon a previous seduction, and as giving probability to her subsequent

testimony that intercourse had been continuous: *Ibid*.

10. In an action for the seduction of an adopted daughter, evidence of kissing and similar familiarities between the parties is admissible to aid the jury in understanding their whole family relations: *Watson v. Watson*, 58 M. 507.

11. A man was sued by his adopted daughter for seduction. *Held*, that she could not show, as an independent fact, that he had told her he had concealed a sum of money for her, of which he wished her quietly to take possession in case he died before her: *Watson v. Watson*, 58 M. 168.

12. How far, in an action for seduction, it is proper to introduce evidence to show defendant's social or pecuniary standing as it appears or is reputed, *quere*: *Threadgool v. Litogot*, 22 M. 271.

13. One sued civilly for seduction cannot show by way of defence that his general reputation for chastity has always been good: *Watson v. Watson*, 58 M. 168.

14. In an action by a father for the seduction of his daughter, evidence that she had stated that two or three years before the alleged seduction she was keeping company with and engaged to another person is inadmissible; it is neither relevant to the issue, nor can it be proved for the purpose of impeaching the daughter, who had been examined as a witness for the plaintiff and had denied such statement: *Fisher v. Hood*, 14 M. 189.

15. A question put to the mother of the alleged victim as to her knowledge of the time her daughter went to see a physician was *held* unobjectionable, and its answer immaterial and not prejudicial: *Dalman v. Koning*, 54 M. 320.

16. Where the alleged victim had stated on cross-examination that at a certain time she and other persons named did not go out near the railroad, she cannot be contradicted unless to show improper conduct: *Ibid*.

IV. INSTRUCTIONS.

17. Where plaintiff, who was defendant's adopted daughter, claimed that she submitted to defendant unwillingly, and under the influence that he had over her by means of the adopted relation, it was *held* that there was no error in refusing to instruct the jury that her omission to make immediate outcry or complaint cast suspicion upon her claim. Counsel could comment upon the fact, however: *Watson v. Watson*, 58 M. 168.

18. The court in an action for seduction cannot charge the jury that the victim's reputation for chastity was bad; that is a question for them: *Dalman v. Koning*, 54 M. 320.

V. DAMAGES.

19. A woman suing her seducer should recover such damages as will fairly compensate her for the wrong she has suffered: *Watson v. Watson*, 53 M. 168.

20. Where the woman seduced is of age, and authorized her father or other relative to bring suit for her, there can in such action be no damages for loss of service; but the basis of recovery is the suffering, shame, mortification and expense which the person seduced, not the nominal plaintiff, has suffered: *Watson v. Watson*, 49 M. 540.

And see *supra*, § 4.

21. Defendant in an action for seduction cannot be held to any less responsibility for forcible wrong than for seduction without force: *Dalman v. Koning*, 54 M. 320.

22. In an action for seduction it was held no error to refuse to charge the jury that, if the plaintiff is entitled to damages, the jury in estimating them should consider the amount and value of the defendant's property, as to the value of which there had been no testimony except defendant's: *Threadgool v. Litogot*, 22 M. 271.

23. Damages for seduction cannot be aggravated by evidence of what the defendant had told his victim he was worth; or by any evidence of his wealth, unless, perhaps, such as is inferable from his general standing in the community: *Watson v. Watson*, 53 M. 168.

24. Court rarely interferes with the damages given by the jury in an action of seduction: *Bennett v. Beam*, 42 M. 847.

25. An award of \$1,200 damages was held not extravagant: *Dalman v. Koning*, 54 M. 320.

SET-OFF.

I. GENERAL PRINCIPLES.

II. IN WHAT ACTIONS ALLOWED.

III. WHAT DAMAGES MAY BE SET OFF.

(a) *In general.*

(b) *Liquidated and unliquidated claims.*

(c) *Claims in different rights.*

(d) *Joint and separate debts.*

(e) *In cases of assignment.*

IV. EQUITABLE SET-OFF.

V. PLEADING AND EVIDENCE.

VI. PRACTICE.

VII. JUDGMENT; COSTS.

As to setting off judgments and executions, see JUDGMENTS, §§ 254-259; MANDAMUS, § 95.

As to RECOUPMENT, see that title, and DAMAGES, X.

That set-off may be claimed in justice's court in suit against municipality, see JUSTICES OF THE PEACE, § 42.

I. GENERAL PRINCIPLES.

1. Set-off is the compensation of one debt or demand for another, by virtue of which damages are recovered of the party in whose favor a balance is found: *Ward v. Fellers*, 8 M. 281.

2. It is in the nature of a cross-action, and does not deny the validity of any part of plaintiff's claim, but sets up a separate and independent claim against him: *M'Hardy v. Wadsworth*, 8 M. 349.

3. The right of set-off in courts of law is purely statutory, and cannot be enlarged: *Woods v. Ayres*, 39 M. 345; *Robbins v. Brooks*, 42 M. 62.

4. Where a defendant has a claim that is proper subject of set-off, he may use it as such or may sue separately upon it: *McEuen v. Bigelow*, 40 M. 215; *Huntoon v. Russell*, 41 M. 316; *Morehouse v. Baker*, 48 M. 335; *Mitchell v. Wells*, 54 M. 127.

5. If a counter-claim is not based on payments made, but constitutes proper set-off, the only effect of failing to appear and plead and prove it would be that in an action thereafter brought to recover it costs could not, under the statute, be recovered: *Huntoon v. Russell*, 41 M. 316.

6. If a defendant in justice's court does not use a claim as set-off when he has an opportunity to do so, H. S. § 6889 denies him costs in a subsequent independent suit: *Morehouse v. Baker*, 48 M. 335.

II. IN WHAT ACTIONS ALLOWED.

7. Set-off is allowed only where the claim sued on would itself be a proper subject of set-off: *Smith v. Warner*, 14 M. 152. Not allowed (under the general statute) in suits upon claims for unliquidated damages: *Ibid.*; *Holland v. Rea*, 48 M. 218; *Morehouse v. Baker*, 48 M. 335.

8. A claim can never be said to be liquidated until some specific amount, or some specific data from which such amount can be calculated by an ordinary mathematical process, shall have been arrived at in such a way as to measure the rights of parties. This can never be the case before verdict where the data for calculation depend on values to be es-

established by witnesses; so there can be no set-off in an action on breach of contract to deliver goods sold: *Smith v. Warner*, 14 M. 152. Or in an action brought by a vendor for vendee's breach of special agreement to take and pay for goods sold: *Holland v. Rea*, 48 M. 218.

9. But if plaintiff joins an unfounded claim for unliquidated damages with claims of a liquidated character, the suit is regarded as based upon the latter, and set-off lies; the right to set-off does not depend upon the form of plaintiff's declaration: *Smith v. Warner*, 16 M. 390.

10. In trover, where it is found that defendant wrongfully took possession and converted plaintiff's property to his own use, judgment follows for plaintiff for the value and interest; and a debt due from plaintiff to defendant cannot be set off: *Dole v. McGraw*, 71 M. — June 22, '89.

11. In summary proceedings for possession of land there can be no deduction of offsets: *McSloy v. Ryan*, 27 M. 110.

III. WHAT DEMANDS MAY BE SET OFF.

(a) *In general.*

12. Nothing can be set off unless it could be sued upon; and, on the other hand, any claim coming within the statute can be set off if it could be sued: *Wallace v. Finnegan*, 14 M. 170.

13. The statutory right of set-off is meant to save the expense of litigation by cross-actions; it does not exist where defendant could not sue at law for the demand he seeks to set off; and it cannot therefore extend to the settlement of accounts between partners: *Gardiner v. Fargo*, 58 M. 72.

14. Where a partnership contained more than two members and one has died, and there is nothing to show that all the rest together stood as one partner only, a balance in the partnership affairs in favor of the decedent cannot in an action at law be set off against a claim against his estate brought by the survivors: *Elder's Appeal*, 89 M. 474.

15. One who has sold stock and leased a store to a firm, and has then taken a partnership interest in the business, can offset the amount due him on such sale and lease in an action brought against him by the firm, and need not leave it to a partnership accounting already pending: *Kinney v. Robinson*, 59 M. 389.

16. One partner paid firm debts from his

private funds at the other's request on the latter's promise to repay half the amount, with interest. Held that, after the dissolution of the firm, he could offset so much against an independent claim for which his former partner sued him at law; and he could do this though a suit in chancery was pending for a partnership accounting: *Cilley v. Van Patten*, 58 M. 404.

17. A claim secured by collaterals may be offset as well as any other, if there are no stipulations to the contrary: *Willard v. Fralick*, 81 M. 481. Nor can defendant be required to deliver up the collateral securities as a condition to his demand being received as set-off: *Wallace v. Finnegan*, 14 M. 170.

18. Logs were sold to be taken in the stream, but the vendor insisted that the purchasers gather them in their boom for scaling and the latter assented. Held, that the purchasers could not, on so doing, claim a set-off as for services rendered; such a claim is not one arising on contract: *Woods v. Ayres*, 89 M. 845.

19. Money voluntarily paid upon a debt is not a ground of set-off in an action by the creditor — such payments should be shown under the general issue: *Brennan v. Tietzort*, 49 M. 897. So, where one allowed judgment to go by default for the full amount of a debt whereon he had made payments, he could not set off such payments in a subsequent action brought by an assignee of the judgment: *Huntoon v. Russell*, 41 M. 816.

20. Plaintiffs' due-bills payable in lumber at their yard are not admissible, either as set-off or as payment, in an action for the purchase price of lumber bought by defendant on the terms of a cash purchase, and including something additional for delivery at a distance from the yard, where the purchase was made without reference to such bills, and without notice to plaintiffs that defendant held them, and before any demand had been made for lumber on them: *Williams v. Jackson*, 81 M. 485.

21. Where the plaintiff in *assumpsit* had received certain merchandise from the defendant under a stipulation that if he sold any of it he should allow the defendant certain rates of commission, it was held that the defendant was entitled to set off against the plaintiff at these rates whatever sums the latter had received under this arrangement: *Josselyn v. Bishop*, 25 M. 897.

22. Money paid in advance for goods which not only do not correspond with the contract but are worthless may be recovered back or

treated as set-off, with no other notice to the dealer that the goods are held subject to the latter's order than is implied in notice of the facts: *Petersen v. Door, Sash, etc. Co.*, 51 M. 86.

23. A claim for personalty received by plaintiff while acting as defendant's guardian, but not accounted for by him, is proper set-off in an action on a note, being for goods sold or for money had and received: *Powell v. Powell*, 52 M. 432.

24. Where part of the consideration for a transfer of land was the settlement of claims outstanding against the grantor, the transferee could not, in an action against him for the money consideration, set off the amount of such claims settled by him before the transfer: *Stanley v. Nye*, 54 M. 278.

25. In an action by a pension agent to recover further extra pay the pensioner may set off and recover judgment for an amount already paid under an agreement void as contrary to public policy: *Hall v. Kimmer*, 61 M. 269.

That money paid for liquor sold in violation of the prohibitory law may be set off against a valid debt to the vendors, see INTOXICATING LIQUORS, § 80.

26. An attorney sued for his client's share of a judgment that he had agreed to collect for a certain compensation if he collected it without any compromise, but which it appears was compromised by another person who had an assignment of it, may prove as set-off the value of his services and disbursements in attempting to collect the judgment: *Dustin v. Radford*, 57 M. 163.

27. A pound-master sued by a city for fees which under the ordinance he should have paid over to the city treasurer for the general fund may set off a claim for highway labor audited in his favor and payable out of the highway fund, it appearing that there is money in the latter fund: *Eaton Rapids v. Houpt*, 63 M. 371. (This case cites *McBrien v. Grand Rapids*, 56 M. 95, as deciding that where plaintiff sues on a contract with a city for building a sewer, and is to be paid out of a special fund created for the purpose, the city can set off against him a claim for water used, which claim, when collected, is payable into the general fund; but only two of the four justices passed upon this point in the case in 56 M.)

As to set-off of rent of house occupied by mining superintendent, see CUSTOM AND USAGE, § 29.

As to compensation for improvements by way of set-off, see EJECTMENT, § 234.

(b) *Liquidated and unliquidated claims.*

28. Damages for failure to collect a note are not liquidated, and therefore cannot be set off under the general statute: *Mitchell v. Shuert*, 16 M. 444.

29. The same is true of the damages for a bailee's misuse or neglect of property: *Brazee v. Bryant*, 50 M. 136. And of an unliquidated claim for breach of covenant: *Hunt v. Middlesworth*, 44 M. 448.

30. A claim for rent and for pasturing a horse cannot be set off where the amount has not been agreed upon or fixed in any way by the parties: *Carter v. Joseph*, 48 M. 615.

31. A claim based upon an unliquidated liability to a third party arising from plaintiff's failure to keep the river clear of logs cannot be set off in an action for services in driving logs: *Shaw v. Bradley*, 59 M. 199.

32. A claim for money had and received is not one for unliquidated damages, as its amount is always ascertainable; such a claim may therefore be set off: *Powell v. Powell*, 52 M. 432.

33. Money had and received is a proper basis of set-off. So held where plaintiff was to collect royalty on manufactures, the profits of which both parties were to share, and returned an item of royalty actually collected, so that defendant was compelled to advance the amount to the patentee: *Harrison Wire Co. v. Moore*, 55 M. 610.

34. An unliquidated claim may be set off against a creditor's claim against an estate; the general statute of set-off (H. S. §§ 7365-7370) applies to actions only, and does not limit H. S. § 5896 in regard to allowance by commissioners on decedents' estates of off-sets against claims: *Willard v. Fralick*, 31 M. 481.

(c) *Claims in different rights.*

35. Claims must be mutual or there can be no set-off; so held where an independent claim of one copartner against the firm was sought to be applied on the amount due from him to the firm in a suit in equity for an accounting: *Kinney v. Tabor*, 62 M. 517.

36. Where one held several negotiable notes as agent of another, and the debtor in paying one made an overpayment, which was paid over to the principal, and the agent afterwards in good faith purchased another of the notes before it came due, held, that the debtor was not entitled to set off such overpayment against this note: *Granger v. Hathaway*, 17 M. 500.

37. In an action by a foreign executor in his individual name upon a claim belonging to his decedent's estate, defendant may set off a claim due him from such estate: *Knapp v. Lee*, 42 M. 41.

That offsets allowable against claims against estate are confined to claims that belong to decedent, see *ESTATES OF DECEDENTS*, § 177.

38. There can be no set-off between claims where the debtor on one side is not the real or nominal creditor on the other. So *held* where a married woman is defendant with her husband to a foreclosure upon a mortgage given by them upon his individual debt; a debt of suretyship by which the complainant with others was liable to her cannot be set off against the mortgage: *Hendricks v. Toole*, 29 M. 340.

39. A debt due a person individually cannot be set off against a debt due from him as trustee; so, where money was placed by a corporation in the hands of its general manager, as trustee, for safe-keeping, and to be paid out in the ordinary course of its business, such trustee cannot offset a debt due to him by the corporation against the moneys in his hands after a voluntary assignment by the corporation for the benefit of its creditors: *First National Bank v. Barnum Wire Works*, 58 M. 124.

40. Land was conveyed to a railroad company by deed containing a covenant against encumbrances. The railroad afterwards passed into the hands of trustees. A mortgage which was upon the lands so purchased by the railroad company was foreclosed, and the trustees bid in the land, not as trustees, but in their own right. It was *held* that this could not be regarded as a *payment*, so as to authorize the trustees to set off the amount of their bid against a mortgage given by the railroad company for the purchase price of the land when they bought: *Griggs v. Detroit & M. R. Co.*, 10 M. 117.

41. A claim of one partner in a suit against the other upon a contract, where the amount due is agreed upon, and which is in no way connected with the partnership affairs, cannot be subjected to a set-off in favor of the other partner arising out of the partnership dealings before there has been an accounting and a balance found due to the other after the liquidation of all the indebtedness of the firm: *Randall v. Baird*, 66 M. 312.

(d) Joint and separate debts.

42. Joint defendants can set off only such demands as are due to all of them jointly. So, under H. S. § 7365, subd. 6; as to justices'

courts, see H. S. § 6384, subd. 11: *Van Middleworth v. Van Middleworth*, 33 M. 183; *Robbins v. Brooks*, 42 M. 62.

43. In a suit against partners they cannot set off claims due to them individually: *Sager v. Tupper*, 38 M. 258.

44. A claim against only one of several plaintiffs cannot be set off against a demand sued on by all: *Fyfield v. Edwards*, 39 M. 264.

45. A joint indebtedness cannot be set off in a suit brought by only one of the debtors: *Detroit, H. & S. W. R. R. Co. v. Smith*, 50 M. 112.

A joint judgment and a sole one cannot be offset, see *JUDGMENTS*, § 258.

46. Where one of two joint defendants dies and the suit is continued against the other, he may set off against the plaintiff's demand a debt due to himself individually: *Newberry v. Trowbridge*, 13 M. 263.

47. A joint and several note may be set off against a claim by one of the makers: *Ferguson v. Millikin*, 42 M. 441.

(e) In cases of assignment.

48. Where the assignees of a bank brought suit upon a promissory note, but sold it pending the suit, and the suit was afterwards continued for the benefit of the purchaser, it was *held* that the note was subject to any offset which could have been made to it in an action by the bank itself: *Newberry v. Trowbridge*, 13 M. 263.

49. A purchaser of a judgment takes it subject to any set-offs existing in favor of the judgment debtor up to the time he has notice of the assignment: *Finn v. Corbitt*, 36 M. 318.

50. A defendant is entitled to offset any demands purchased by him before notice of the assignment by plaintiff of his demand, and it is immaterial that they are purchased for very much less than the sums due upon them: *Smith v. Warner*, 16 M. 390.

51. An assigned claim cannot be offset by a demand that had not matured at the time the assignment was made: *Kull v. Thompson*, 38 M. 685.

52. Damages for the failure to complete performance under a contract cannot be set off against a recovery by an assignee of the contractor's right of action for the work actually done, but must be sued for in an action against the contractor himself. And if the assignee sues upon two contracts, an excess of damages on one cannot be set off against his recovery on the other: *Howell v. Medler*, 41 M. 641.

53. The legal title to an assigned claim vests in the assignee, and the assignor cannot, without a reconveyance, use it as a set-off in a suit brought against him by the debtor: *Lunge v. Perley*, 47 M. 852.

54. To authorize a set-off as against an assignee's rights the debt must have existed as a mutual credit at the time of the assignment thereof: *Lockwood v. Beckwith*, 6 M. 168; *Kinney v. Tabor*, 62 M. 517.

55. If a claim belonged, when suit was commenced, to the party seeking to set it off, a subsequent assignment or sale will not bar the right of set-off: *Kinney v. Tabor*, 62 M. 517.

IV. EQUITABLE SET-OFF.

As to set-off in chancery of judgments and executions, see JUDGMENTS, §§ 254, 258, 259.

56. Upon ordinary debts the rules of set-off at law and in equity are alike: *Hendricks v. Toole*, 29 M. 340. And set-off may be allowed in equity where it would be allowed at law: *First National Bank v. Barnum Wire Works*, 58 M. 124.

57. A party seeking to make a set-off in equity beyond that given by the statute must show affirmatively the existence of all the facts necessary to raise the equity: *Lockwood v. Beckwith*, 6 M. 168.

58. Equity will not allow a set-off where the law would not, unless there be special equities growing out of the transaction itself requiring it: *Ibid.*

59. The mere existence of cross-demands is no ground for awarding an equitable set-off: *Ibid.*; *Kinney v. Tabor*, 62 M. 517.

60. Where a partnership became insolvent and made a general assignment for the benefit of creditors, including therein a note past due, and the maker of the note held the acceptance of the partnership not then due, it was held that the insolvency of the acceptors was not, of itself, sufficient to authorize a set-off in equity of the acceptance against the note in the hands of the assignee, in the absence of evidence that the acceptance was based upon the note, or that the maker of the note trusted to it at the time as a means of discharging his obligation: *Lockwood v. Beckwith*, 6 M. 168.

61. The insolvency of one party, in the case of mutual credits, is not of itself sufficient to authorize an equitable set-off: *Hale v. Holmes*, 8 M. 87; *Kinney v. Tabor*, 62 M. 517.

62. Equity cannot compel a vendor to receive his own paper on the contract of sale when he has not agreed to do so, and the pur-

chaser has not bound himself to take and pay for the property. It is not a case of set-off, inasmuch as there is no contract on the part of the purchaser against which to allow the paper: *Hale v. Holmes*, 8 M. 87.

63. A bill to have a set-off allowed against a decree in equity cannot be sustained unless the party seeking to obtain the set-off is the real owner and has the control of the counter-claim, so that the creditor who sues him is his debtor as to the claim offered in reduction. So held where stockholders in an insolvent plank-road company, against whom decree had been rendered for debts of the company, sought to set off against the decree demands in favor of the company: *McGraw v. Pettibone*, 10 M. 580.

64. On foreclosure of a mortgage given to secure indorsements not connected with partnership dealings, an accounting as to partnership matters between the parties cannot be had to raise a counter-claim when no special equities are set up entitling defendants to the benefit of an equitable set-off: *Hess v. Final*, 53 M. 515.

65. A mortgage was given by an attorney to a partnership to secure a balance on mutual advances and accommodation indorsements. The attorney, while the dealings continued, performed professional services for the firm and also for individual members thereof. Held, that his charges for the former were equitable set-off to the mortgage, while those for the latter were not: *Brackett v. Sears*, 15 M. 244.

66. Three persons who had held land in partnership sold it, and gave separate conveyances to the purchaser, who, in pursuance of an arrangement to that effect, gave back a mortgage for the purchase price to one of them. The purchaser afterwards bought up a mortgage given by one of them on an undivided one-third of the land, and sought to make a set-off of this in a suit to foreclose his own mortgage. But the set-off was refused, the court holding that claims under that mortgage could be better litigated in a separate suit; and the decree was so framed as to leave that mortgage untouched: *Adams v. Bradley*, 12 M. 846.

67. Where land which was under lease for a term was sold, and a mortgage taken back for the purchase price, and it was agreed between the parties that during the leasehold term the mortgagee should pay to the mortgagers the interest on the purchase price, held, that on a foreclosure of the mortgage the amount of this interest should be deducted from the amount due on the mortgage, and a

sale be decreed for the balance only: *Jones v. Disbrow*, H. 102.

68. One who receives a conveyance of lands with covenant against encumbrances and gives back a mortgage for the purchase price is not confined to his remedy upon the covenant, but may set off the amount of a prior mortgage which he has paid against his own mortgage when suit is brought to foreclose the latter: *Detroit & M. R. Co. v. Griggs*, 12 M. 45.

69. But he cannot, in such suit, set off the amount of prior encumbrances which he has neither paid nor shows that he has been or is in danger of being damnified by: *Griggs v. Detroit & M. R. Co.*, 10 M. 117.

70. He does not show that he is damnified by setting up the foreclosure in chancery of an encumbrance and the sale of the mortgaged premises, but without alleging that he was a party to the suit or in any way bound thereby: *Ibid.*

71. In the foreclosure of a mortgage given for the purchase price of land, the defendant sought to set off certain encumbrances which were a lien on the land when he bought, and the relief was denied because he had not paid off the encumbrances, and he paid them off after decree; it was held that he might then file a bill to have the set-off allowed: *Detroit & M. R. Co. v. Griggs*, 12 M. 45.

72. Where a grantee with warranty who has given a purchase-money mortgage claims, on foreclosure, deduction of the amount of a valid subsisting prior mortgage, such equitable set-off must be clearly proved and the amount to be deducted must be certain: *Smith v. Fitts*, 37 M. 148.

73. Where a mortgage is assigned reserving to the mortgagee a residuary interest, and dealings continue between the mortgager and mortgagee afterwards, and the nature of the dealings and the state of the accounts were such as to show that the dealings were dependent on the mortgage, held, that the accounts of the mortgager subsequent to the assignment might be set off against the mortgagee's residuary interest: *Brackett v. Sears*, 15 M. 244.

74. A mortgage debt which has fully matured was offset by a claim which the mortgager had against the mortgagee. The latter assigned his mortgage and went into bankruptcy, and the mortgager proved his claim and drew his dividends from the bankrupt's estate. Held, that he was not thereby precluded from offsetting so much of his claim as was not met by the dividends against the mortgage held by the assignee, and that he could maintain a bill against the assignee to

compel him to apply the amount in cancellation of the mortgage: *McKenna v. Kirkwood*, 50 M. 544.

75. Upon a bill to redeem chattels mortgaged by the complainant to the defendant, and under evidence tending to show an understanding that a claim of the complainant against the defendant should be turned in on the mortgage debt, and this claim was submitted to arbitration, the award thereon in complainant's favor constitutes a valid equitable offset to the mortgage: *Flanders v. Chamberlain*, 24 M. 305.

76. A set-off against a judgment cannot be made in equity of demands which might have been proved in reduction of plaintiff's claim in the former suit: *McGraw v. Pettibone*, 10 M. 530.

77. Where advances made by parties who have no equities are counterbalanced by profits received they will not be considered: *Austin v. Dean*, 40 M. 886.

78. An undetermined suit to establish an equitable set-off cannot affect the right to set off an execution; nor does the refusal of a motion to compel sheriff to set off an execution bar relief in equity: *Lyon v. Smith*, 66 M. 676.

V. PLEADING AND EVIDENCE.

79. The object of a plea or notice of set-off is to enable defendant to set up any independent cause of action which he has against plaintiff and might otherwise sue upon as a counter-claim, and obtain its allowance in the case in which it is pleaded: *Brennan v. Tietz*, 49 M. 397.

80. A notice of set-off in terms as broad as the common money counts in *assumpsit* will, if no bill of particulars is called for, cover anything that could be proved as a demand under such counts; such as a joint and several note signed by the plaintiff: *Ferguson v. Milikin*, 42 M. 441.

81. In an action on a promissory note given for the balance on a struck account, a counter-claim that has not been settled cannot be proved under notice of set-off without being set out in a bill of particulars: *Graham v. Chubb*, 39 M. 417.

82. Where a plea to a declaration for items of an account is accompanied by a sworn statement of set-off it cannot be objected that there is no notice of set-off: *Kinney v. Robison*, 52 M. 389.

83. It seems that an affidavit verifying an account pleaded in set-off which states that the "annexed account is just, due and unpaid" is a substantial compliance with H. S.

§ 7525, which requires such affidavit to show that the account "is justly owing and due:" *Lamb v. McGowan*, 66 M. 615.

84. Whether service of copy of such account and affidavit was not waived where plaintiff in justice's court was present, making no objection, when the account and affidavit were filed, and where he moved an adjournment, *quere*; court equally divided: *Ibid*.

85. Plea and notice of set-off superseded by subsequent plea *puis darrein*: *Whittemore v. Stephens*, 48 M. 578.

86. Where notice of set-off was withdrawn it was not error to exclude the testimony it would have covered: *Donovan v. Halsey Fire-Engine Co.*, 58 M. 38.

87. The burden of proving set-offs is always on defendant, and does not fall on plaintiff even where the suit is on an obligation that has been received in consideration of the renewal of the set-offs: *Mitchell v. Wells*, 54 M. 127.

88. Declaration upon special contract and on common counts; evidence tending to establish both; error in rejecting defendant's offer to show set-off *held* not cured by plaintiff's withdrawing all evidence under common counts: *Kelly v. McKenna*, 18 M. 381.

89. A. bought out B.'s interest as partner in a brewery, and gave his notes in payment, agreeing to assume and pay B.'s share of the debts of the firm and to indemnify him against all liability. It was further agreed that if A. paid the debts beyond what appeared on a certain schedule that he should be entitled to a corresponding deduction on the notes. B. brought an action against A. upon one of the notes, to which he pleaded the general issue with notice of set-off. *Held* that, under this plea of set-off, A. might introduce parol evidence to show that he paid claims in excess of the schedule list, and that such payment was a legitimate ground of set-off: *Bowker v. Johnson*, 17 M. 42.

90. Where a claim was brought against an estate for the value of services rendered to decedent, the estate could give evidence, in offset, of contributions by decedent to the support not only of himself but of claimant; and such proofs could not be excluded on the ground that they were not specific as to particulars: *Ludlow v. Pearl's Estate*, 55 M. 312.

VI. PRACTICE.

91. Act 123 of 1885 provides that when defendant has given notice of set-off plaintiff shall not be allowed to discontinue his suit or submit to a nonsuit without defendant's con-

sent. Whether before the statute he could be allowed to do so, *quere*; court equally divided: *Merchants' Bank v. Schulenberg*, 54 M. 49.

92. In an employee's action for salary an act of misconduct should be proved by itself by way of set-off, instead of being brought out on cross-examination: *Bolt v. Friederick*, 56 M. 20.

93. Set-offs to claims against a decedent's estate should be presented on the hearing before the commissioners, and cannot be withdrawn: *Green v. Eaton Probate Judge*, 40 M. 244.

VII. JUDGMENT; COSTS.

94. The judgment is statutory: *Ward v. Fellers*, 8 M. 281.

95. Defendant (in suits brought in the circuit court) is entitled to judgment upon any surplus of his claims beyond plaintiff's: *M'Hardy v. Wadsworth*, 8 M. 349.

96. Where a case has been tried before a justice and judgment rendered for defendant for the excess of his set-off above plaintiff's demand, and plaintiff, having appealed, fails to appear and bring the cause to trial in the circuit court, defendant cannot have the cause tried in the circuit, and can take in the circuit a judgment only of nonsuit or of discontinuance; he cannot have a judgment for his set-off: *Stange v. Wayne Circuit Judge*, 22 M. 408.

97. On appeal from a justice's judgment rendered under H. S. § 6887 (where balance of set-off exceeds \$300), the circuit court can render no other or different form of judgment than the justice could have done; nor can the supreme court: *Cross v. Eaton*, 48 M. 184.

98. If set-off reduces plaintiff's recovery in suit brought in the circuit below \$100 he should still have costs: *Wheeler v. Harrison*, 28 M. 264; *Davis v. Freeman*, 10 M. 188.

99. But a payment made before suit and applied in reduction of a demand is not a set-off so as to give costs to plaintiff who in consequence recovers less than \$100: *Mandigo v. Mandigo*, 26 M. 349.

100. So *held* even though the amount to be applied in payment is disputed; as where a debtor delivered a horse to his creditor to sell and apply proceeds on debt, and where the creditor exchanges the horse for other property, the transaction amounted to a payment, not a basis of set-off: *Strong v. Kennedy*, 40 M. 327.

101. Where an understanding between the parties that articles furnished in mutual dealings should be applied reciprocally in part

payment, etc., but where no account had been rendered or balance struck, the court was *held* justified in treating the case, so far as costs were concerned, as one of set-off rather than of payment: *Wheeler v. Harrison*, 28 M. 264.

102. *Held*, in a particular case, that there was no basis in the record for plaintiff's claim that he had established a demand above \$100 which had been reduced below that sum by set-off: *Carter v. Snyder*, 27 M. 484.

SETTLEMENT.

See PAYMENT AND DISCHARGE.

SHERIFF.

See the Index.

SHIPPING.

I. PUBLIC REGULATIONS.

II. OWNERS AND MORTGAGEES.

III. THE MASTER.

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VI. FREIGHT.

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IX. MARITIME LIENS.

X. COLLECTION OF DEMANDS AGAINST VESSELS.

(a) *In general; jurisdiction.*

(b) *Pleading and practice.*

(c) *Appeals.*

As to admiralty jurisdiction, see ADMIRALTY.

As to insurance of vessel and abandonment to underwriters, see INSURANCE, §§ 248-252, 297, 362.

Taxation of vessels, see TAXES, §§ 107, 108.

I. PUBLIC REGULATIONS.

1. It is negligence to disregard the positive regulation that vessels moving at night shall exhibit lights, even though the practice may have been otherwise: *Billings v. Breinig*, 45 M. 65.

2. A general custom of navigation — as, for example, for vessels to pass each other to the left — may be proved by the testimony of persons skilled in navigation. Such custom is a part of the law of the land; and a departure from it occasioning collision will render the party liable, unless the other party, by rea-

sonable effort, might have prevented it; and each party should act upon the presumption that the other party will adhere to the custom: *Drew v. The Chesapeake*, 2 D. 83.

3. The rights and duties of navigators cannot be made by legislation or ordinance to depend on the will or discretion of any officer. The regulations of navigation to be enforced by a harbor-master must be such as are valid and binding on all persons, and if he interferes forcibly he must justify his action by the facts. He cannot interfere with navigators unless they are in fact violating their duty: *Horn v. People*, 26 M. 231.

4. A complaint is not valid which merely shows that a party has refused to obey the orders of a harbor-master; it must show such conduct as is a violation of the rights of navigation and aver such facts as would justify the orders and render disobedience wrongful: *Ibid.*

5. The harbor-master of Detroit is, like the other police officers, a purely ministerial officer, and he is confined to the exercise of such duties as may be imposed by valid ordinances for the purpose of "preserving and regulating the navigation of said river." *Ibid.*

II. OWNERS AND MORTGAGEES.

6. Joint owners of a vessel are bound to pay each his own share of the expense of repairs; and, without clear evidence of a special agreement to the contrary, the law will imply a promise to pay accordingly: *Sheehan v. Dalrymple*, 19 M. 239.

7. Where one part owner of a vessel had incurred expense for repairs and equipments which involved the procurement of Canada money, the premium necessarily paid in American money to obtain the Canadian funds was a proper charge against the other part owner: *Ibid.*

8. The interest of the managing owner of a vessel entitles him to act for himself in obtaining bail for its release from detention, and the bail cannot hold co-owners personally liable for the security without showing that they were parties to the transaction: *Mitchell v. Chambers*, 43 M. 150.

9. The several part owners of a vessel are usually co-tenants, not partners, and will not be regarded as partners unless it distinctly appears that they are so: *Ibid.*

10. Co-owners of a vessel are not personally liable on claims incurred by it before they acquire their interest: *Ibid.*

11. Where paper payable to the order of a firm engaged in running a vessel is received in

the ordinary course of the business, indorsement thereof in the firm name by one partner binds the rest, and inquiries as to the powers and duties of the vessel's managing owner, etc., are immaterial: *First National Bank v. Freeman*, 47 M. 408.

12. The owners of a vessel deeded it to certain persons as security, with authority to sell it if a good opportunity offered. *Held*, that the grantees had a right to pay any outstanding claims for supplies which had been properly allowed against the vessel, and the grantors could not complain of their paying any bills for repairs which they had themselves contracted to pay; the grantees could also pay from the earnings of the boat for such repairs as were reasonably necessary for keeping the vessel in good condition while in their hands or for putting it in good condition to sell, or for such as the grantors directed; but they could not be allowed for such expenses as had been made necessary by their own neglect or mismanagement: *Fick v. Runnels*, 48 M. 302.

13. One who enters a vessel on a ship-broker's books as for sale is responsible for the correctness of the data of description there appearing if they were meant to be relied on and were relied on: *Gilchrist v. Manning*, 54 M. 210.

14. The federal statute requiring transfers of United States vessels to be recorded in the custom-houses excludes state legislation on the subject, and therefore renders inoperative, as to enrolled vessels, H. S. § 6193, avoiding chattel mortgages not filed: *Robinson v. Rice*, 8 M. 235.

15. The assignee of a mortgage of a vessel is not deprived of the usual remedies by equities existing between the mortgagors: *Dalrymple v. Sheehan*, 20 M. 224.

16. Where the whole of a vessel is mortgaged a foreclosure sale should be of the whole; the interests of the mortgagors should not be sold separately: *Ibid*.

17. The holder of a mortgage on a vessel who had for seven years treated it as worthless, and who permitted a sale to innocent purchasers, was held estopped from asserting his lien: *Harkness v. Toulmin*, 25 M. 80.

As to priority of record of mortgage of vessel, see RECORDING ACTS, § 59.

III. THE MASTER.

18. The master of a vessel sailing the lakes has no power as such to bind the owner by a subscription for the use of lights on St. Clair flats for the season, when the owner resides

at Detroit and has not been consulted: *Strong v. Saunders*, 15 M. 339.

19. It seems that a ship's husband is not warranted in assuming extraordinary powers without obtaining authority from the owners if they can be readily communicated with, as by telegraph: *Mitchell v. Chambers*, 48 M. 150.

20. Where a barge laden with lumber lies water-logged at her point of lading, but is not in immediate danger and can be unloaded, her master, the owner being within easy reach of mail or telegraph, has no general authority to contract for towage to the point of destination; and where he did so contract, at a rate eight times the usual one, the owner was held not liable: *Botsford v. Plummer*, 67 M. 264 (Oct. 20, '87).

21. A ship's husband being also part owner cannot, by mere virtue of such relation, bind the co-owners by obtaining bail for the release of the vessel from seizure under civil process for collection and for repair: *Mitchell v. Chambers*, 48 M. 150.

22. The assent of vessel-owners to the acts of the ship's husband cannot be implied from their silence except as to such acts as are fairly appropriate to occasions with which he is usually allowed to deal: *Ibid*.

23. The master of a vessel cannot relieve himself of responsibility for its safe management by surrendering its control to a charterer: *Cuddy v. Horn*, 46 M. 596.

24. One placed in charge of a vessel laid up in winter under promise of employment as captain should she be placed in commission the coming season, and who employs a person as mate, cannot render the owner liable by inviting such person on board who is then injured because of an open hatchway: *Caniff v. Blanchard Nav. Co.*, 66 M. 638.

25. A master who has been peremptorily discharged by the owner before the expiration of the term for which he was hired can sue as for breach of contract and need not offer to resume command before leaving and suing. He owes no duty to the owner beyond using reasonable diligence to obtain other employment: *Jones v. Graham, etc. Transp. Co.*, 51 M. 539.

26. Common-law courts have cognizance of such action: *Ibid*.

IV. CHARTER-PARTY; TOWAGE.

27. A charter-party, under which the charterer mans and equips the vessel and assumes the entire control of and responsibility for it during the voyage, is a hiring of the vessel, and the charterer thus assumes *pro hac vice*

all the rights and obligations of owner. And where a vessel so hired was wrecked, the owner was not liable for money borrowed by the vessel-master for paying off the men, saving goods, etc., said loan being made in the interest of the charterer: *First National Bank v. Stewart*, 26 M. 88.

28. A contract of partnership for the use of a vessel put into a line for carrying passengers and freight, which contract arranges the contribution each party is to make and the share of profits to be received, is not a charter-party, though one of the party furnishes the vessel: *Ward v. Thompson*, 22 How. (U. S.) 330.

29. Where defendants, being charterers of a vessel, had agreed to tow it in port on its arrival, and the master of the vessel, on arriving, gave notice to their agent in charge of the loading and towing of vessels, and gave no other notice, defendants' office being distant and it being after office hours, and the weather and situation of the vessel requiring the master's presence on board, it was decided that, in the absence of any proof that either of the defendants was at or near the shipping port, such notice was sufficient to put them in default on their agreement, a tug not being furnished: *Loud v. Campbell*, 26 M. 289.

As to the measure of damages in such cases, see DAMAGES, § 88.

30. In an action to recover the price of towing under an agreement to tow logs and deliver them at a named mill, where the defence is set up that through plaintiff's negligence in fastening a raft outside of the mill boom, instead of delivering the same safely within the mill boom, a storm which arose broke up the raft and carried away some of the logs, a charge to the jury that if, when the plaintiff arrived with the tug and raft, the boom was not in a condition to be entered, and it was apparent that in five or six hours, or some other reasonable time, an entrance would be practicable, it was his duty to remain there for such time, unless, on consultation with those in charge of the boom, his earlier departure was assented to, *held*, under the circumstances, to be erroneous, in that it attributed to the plaintiff a distinct, separate and imperative duty, and wholly ignored the existence of any concurrent duty of the defendant or those who were to receive for him: *Mitchell v. Hosmer*, 30 M. 227.

31. An agreement never to tow vessels "in competition with" the other parties to the agreement was *held* too indefinite to be enforced: *Caswell v. Gibbs*, 33 M. 381.

V. SEAMEN.

32. The captain of a vessel, supposing that he had a right (under an oral contract with the owner) to buy the vessel on indefinite time payments, employed his son as seaman, telling him to look to the owner and to the vessel itself for payment, and all the seamen but the son were paid from the vessel's earnings. The owner, having sold the vessel to third parties without paying the son's wages, was *held* liable to him as upon a distinct employment: *Bonnah v. McMorran*, 64 M. 145.

VI. FREIGHT.

And see CARRIERS, IV, (b).

33. Freight *pro rata itineris* is due when the ship, by inevitable necessity, is forced into a port short of her destination, and is unable to prosecute her voyage, and the goods are there voluntarily accepted by the owner: *Rossiter v. Chester*, 1 D. 154.

34. The owner of goods was deemed to have voluntarily accepted them at the intermediate port when, knowing that the voyage had been abandoned, its further prosecution having become impossible or extremely hazardous, he there demanded his goods of the agent of the forwarders, with whom they were stored, tendering payment of their charges for storage, and brought replevin to recover possession on the refusal of such agent to deliver them: *Ibid*.

VII. GENERAL AVERAGE.

35. The doctrine of general average is known only to the maritime law, and cannot be enforced in a court of common-law jurisdiction; so *held* in 1848: *Rossiter v. Chester*, 1 D. 154.

36. But in 1876 it was *held* that, where a loss occurs which gives rise to the principles of general average, and the goods which have been saved by the sacrifice of other property have been delivered to the owner, a promise is implied on his part to contribute to the loss sustained by others for his benefit, and such promise is enforceable in a common-law court: *Backus v. Coyne*, 35 M. 5.

37. Though there may be cases where, on account of the number of parties interested, difficulty might arise that would render chancery the more convenient tribunal: *Ibid*.

38. The steamer Missouri, being a new and seaworthy boat, and having on board passengers and a cargo of goods, on a voyage from Buffalo to Chicago encountered a very severe

gale on Lake Huron. She was in great danger of perishing from the violence of the winds and the roughness of the waves. After long struggling with the tempest the master and crew agreed that it was necessary to lighten her in order to save her with the freight and passengers. Accordingly a quantity of goods were, for that purpose, thrown overboard by the crew. The boat was saved, though much injured, and returned to Detroit with the residue of her cargo. *Held*, that these facts would constitute a proper case, under the maritime law, for general average: *Rossiter v. Chester*, 1 D. 154.

39. Goods lightered away from a grounded vessel in order to save the rest of the cargo are not liable to contribute to the expense incurred in doing so: *Backus v. Coyne*, 45 M. 584.

40. The sum for which a vessel is sold on execution must be accepted as its true value in a suit for contribution on a claim for general average, unless the claimant had caused it to be sold for less than its value: *Ibid*.

41. An adjustment consented to by one partner was held not to present a case of apportionment only, from items agreed upon, according to the usual law and custom of general average, but one rather of arbitration and award, and beyond a partner's power: *Backus v. Coyne*, 35 M. 5.

VIII. LIABILITY FOR TORTS; JURISDICTION; LIMITED LIABILITY.

Passenger justified in following officers' directions in embarking, see CARRIERS, § 132.

42. In cases of collision of vessels the burden of proof is on plaintiff not only to show negligence on defendant's part but ordinary care on his own: *Drew v. The Chesapeake*, 2 D. 33.

As to custom of passing to left, see *supra*, § 2.

43. Passengers on a steam-yacht chartered for their use, but not under their control in matters of navigation, have a right of action against its owners for injuries caused them by the negligent management of those in charge of it: *Cuddy v. Horn*, 46 M. 596.

44. If a passenger upon one vessel is injured by its collision with another in consequence of the negligence of the officers of both, he has a right of action against them jointly, and it is for the jury to fix the liability where it belongs: *Ibid*.

45. An injury caused by a vessel's running into a boom that pertains to the adjacent land is not a maritime tort and is not cognizable in admiralty, but may be sued for in the

state courts: *City of Erie v. Canfield*, 27 M. 479.

46. A wire rope was stretched across a river for ferrying purposes, and defendant, knowing the character and position of the ferry, ran his vessel after dark across the ferry track without warning by light or whistle, and thereby caused the death of the ferryman. *Held*, that the state courts had jurisdiction of an action for such death. *Held*, also, that defendant was negligent; that the connection of his negligence with the death was for the jury; and that it was for plaintiff to show that decedent was in the exercise of due care, and was not, in part, the producer of what happened: *Billings v. Breintig*, 45 M. 65.

47. A ship-owner owes no duty to keep the hatchways covered and safe when his vessel is laid up in winter: *Caniff v. Blanchard Nav. Co.*, 66 M. 688.

48. Where a person invited on board by one in charge was familiar with vessels of this class, knew that they had hatchways and that such ways were liable to be open when the vessel was in port, was injured by falling through an open hatchway, he was contributorily negligent and could not recover: *Ibid*.

49. The act of congress of March 3, 1851, which exempts ship-owners from liability for loss by fire, provides that the act "shall not apply to the owner or owners of any canal-boat, barge or lighter, or to any vessel of any description whatsoever used in rivers or inland navigation." *Held*, that a steamboat used in navigating the waters of the great lakes from Buffalo to Detroit was not within the exception of the *proviso*, as she was not used in inland navigation, and that the owner of such steamboat was not liable for goods entrusted to him as a common carrier and burnt with such steamboat without his fault: *American Transp. Co. v. Moore*, 5 M. 868, 24 How. 1.

50. The limited liability act of congress exempting ship-owners from personal liability for injuries caused by the negligence of those in charge of their vessels does not apply to boats navigating streams connecting the great lakes: *Cuddy v. Horn*, 46 M. 596; *The Mamie*, 5 Fed. Rep. 818.

IX. MARITIME LIENS.

51. The nature and incidents of the lien given by the maritime law to the material-man considered and explained: *Wight v. Maxwell*, 4 M. 45.

52. A lien once acquired by virtue of the maritime law clings to the ship wherever she

may go, and is thus distinguished from the common-law lien, which presupposes possession of the thing and which is gone when the possession is relinquished: *Ibid.*

53. For means or supplies furnished or money advanced in the building, fitting and furnishing a vessel, R. S. 1846, ch. 122, gave no lien. The lien was restricted to work done and materials furnished: *Lawson v. Higgins*, 1 M. 225.

54. The lien created by R. S. 1846, ch. 122 (C. L. 1857, ch. 149) was confined to contracts made or injuries arising in Michigan: *Bidwell v. Whitaker*, 1 M. 469; *Turner v. Lewis*, 2 M. 350.

55. But no distinction was made between citizens of this state and those of other states in the enforcement of claims: *Bidwell v. Whitaker*, 1 M. 469.

56. If the contract was made in another state, though to be performed in this state, no lien attached under the law of 1846: *Turner v. Lewis*, 2 M. 350.

57. A specific lien was given by R. S. 1846, ch. 122, on the boat or vessel for all such demands as were mentioned in the first section: *Bidwell v. Whitaker*, 1 M. 469.

58. Under the act of 1839 for the collection of demands against boats and vessels (S. L. p. 70), a portion of which was incorporated into said R. S. 1846, ch. 122, it was held that no specific lien was given upon the vessel until the actual levy of attachment, and that the remedy by the act was general, and not restricted to causes of action arising within the state: *Moses v. The Missouri*, 1 M. 507.

59. The act of 1839, p. 70, to provide for the collection of demands against boats and vessels, gave a new and cumulative remedy, but did not give a lien on the vessel itself until taken on the attachment; and the remedy given by that act was not reserved by R. S. 1846, ch. 173, § 2 (which chapter repealed the act), to a party whose proceedings were not instituted under the act before its repeal—such remedy not being a *right accrued* within the meaning of these words as used in that section: *Robinson v. The Red Jacket*, 1 M. 171.

X. COLLECTION OF DEMANDS AGAINST VESSELS.

(a) *In general; jurisdiction.*

60. The boat and vessel law of 1846—C. L. 1857, ch. 149—(repealed in 1864) held unconstitutional as depriving persons of property

without due process of law: *Parsons v. Russell*, 11 M. 113.

61. The nature and incidents of a proceeding *in rem*, in the sense in which the term is used in the maritime law, explained: *Wight v. Maxwell*, 4 M. 45.

62. Proceedings under the boat and vessel law of Ohio, which provides for no notice of the proceedings to non-residents, held to have no extra-territorial force, and not to displace the previous lien of creditors in this state: *Ibid.*

63. To be subject to the water-craft law the *res* must be a vessel in use or capable of use at the time of seizure, not a wreck incapable of service: *Baker v. Casey*, 19 M. 220.

64. Where a brig bound for Chicago from a port outside of Michigan broke a boom in passing out of Manistee river, and was proceeded against under the water-craft law, it was held that while that law was meant to give relief where the vessel was at the time navigating the waters of the state, and where no remedy could be had in admiralty, it was not confined to water-craft intended for use only in the waters of this state: *City of Erie v. Canfield*, 27 M. 479.

65. Under the water-craft law a sheriff can go beyond his bailiwick to serve process on the water, but not away from the water; and he cannot seize or sell property on land not within his county: *Baker v. Casey*, 19 M. 220.

66. The wilful destruction of an ice-field by running a vessel so near it as to break it up gives a cause of action for damages within the water-craft law: *People's Ice Co. v. The Excelsior*, 43 M. 386, 44 M. 229.

67. H. S. § 8236 gives a lien on water-craft of over five tons' burden. Held, that proceedings wherein it does not appear that the boat libelled was of more than five tons' burden fail to show a want of jurisdiction, and therefore are no bar to a replevin suit brought by the mortgagees of the boat: *Gould v. Jacobson*, 58 M. 288.

68. And where it appeared, on appeal, that there was no evidence showing that the vessel had the tonnage essential to a lien, the defect was held jurisdictional and the proceeding was dismissed: *Ganoes v. The Jack Robinson*, 18 M. 456.

(b) *Pleading and practice.*

69. The complaint, under the act of 1839, should contain every substantial averment which would be necessary in a declaration at common law for the same cause of action, and it was governed by the rules which apply to

declarations in respect to joinder and misjoinder of counts: *The Milwaukee v. Hale*, 1 D. 806.

70. In this case the complaint contained four counts; two of which were, in substance, that plaintiff shipped on board the vessel, which was employed by the owners as common carriers, a certain quantity of wheat, and, in consideration that the plaintiff promised to pay a certain price for the transportation, the owners of the vessel received the wheat on board, and agreed to proceed directly from the place of shipment to the port of destination, and deliver the same in good order, but, on the contrary the vessel was so carelessly managed, etc., that the wheat was lost, and not delivered. The other two counts set forth a like shipment and undertaking to deliver, etc., pursuing the ordinary route, without unnecessary deviation, etc., and alleged a deviation, during which the ship was assailed by a great storm and wrecked, etc., and the wheat was wet, damaged and spoiled, and wholly lost, etc., and not delivered. *Held*, that all these counts were in *assumpsit*, and properly joined: *Ibid*.

71. In a complaint under R. S. 1846, ch. 122, before an officer authorized to perform the duties of a judge of the supreme court at chambers, it was not necessary to aver that at the time of the application the vessel was in the county where the application was made. But it was otherwise where the application was made to a judge of a court of record: *Ward v. Wilson*, 8 M. 1.

72. It was not necessary, in order to confer jurisdiction, to set forth that the services, etc., for which the claim was made were rendered in this state: *Ibid*.

73. A description of the vessel as "a vessel navigating the waters of this state" is equivalent to the averment that such vessel is used in navigating, etc.: *Ibid*.

74. In proceedings under H. S. §§ 8235-8238 an allegation of the tonnage of the vessel proceeded against is essential to the jurisdiction: *Gano v. The Jack Robinson*, 18 M. 456. See *Gould v. Jacobson*, 58 M. 288.

75. Where, under the provisions of ch. 122, R. S. 1846, a vessel was attached at the instance of a creditor, and the notice to creditors to produce their claims was published three months, and at the end of the three months, and before any order of sale, the owner of the vessel procured her discharge by giving the bond required by said chapter, it was *held* that creditors who had failed to file their demands with the proper officers within the three months lost the benefit of

the lien given them by section 1 of said chapter: *Watkins v. Atkinson*, 2 M. 151.

76. In declaring on a bond executed under § 13 of said chapter, it was not necessary to aver that the plaintiff made the application in writing in manner and form required by §§ 2 and 3: *Truesdale v. Hazzard*, 2 M. 844.

77. Nor was it necessary to aver that the vessel released upon the execution of the bond was, at the time of its seizure, within the jurisdiction of the court issuing the warrant: *Ibid*.

78. It was only necessary for the plaintiff to prove the execution of the bond, and his claim or demand as set out in the declaration, to entitle him *prima facie* to a recovery: *Ibid*.

79. Under the terms of the present water-craft law the county clerk's approval of the bonds offered on obtaining restitution of a vessel seized for debt is not reviewable by the circuit judge upon affidavits contradicting the evidence on which the bonds were approved: *Horn v. Wayne Circuit Judge*, 89 M. 15.

(c) Appeals.

80. The jurisdiction of the supreme court under the water-craft law is properly regarded as appellate and not original, although, by H. S. §§ 8272, 8273, a new hearing, upon new testimony if denied, is contemplated: *Gano v. The Jack Robinson*, 18 M. 456.

81. The filing of an appeal bond within the time prescribed by the statute (see H. S. § 8270) is necessary to give jurisdiction on an appeal under the water-craft law: *Canfield v. The City of Erie*, 21 M. 160.

82. On an appeal under the water-craft law, the case must be certified by the trial judge, and the supreme court cannot act on a mere transcript of the stenographer's notes of the testimony taken on the trial below: *People's Ice Co. v. The Excelsior*, 43 M. 836.

83. Proceedings under the water-craft law are special, and differ from proceedings in either law or equity. Such causes are tried like cases at common law, but on appeal are to be tried over again, and the appellate court is not confined to the evidence taken below: *Ibid*.

84. The practice as to taking testimony in appeal cases explained; and where the appeal was brought under a misapprehension as to the requirements regarding the taking of testimony, additional time for taking testimony was granted: *Ibid*.

85. The supreme court can modify a decree in these proceedings by including the parties to the bonds: *Ibid*.

SLANDER.

I. WHAT CONSTITUTES.

- (a) *What words actionable.*
- (b) *Malice.*
- (c) *Repetition.*

II. PROCEDURE.

- (a) *Parties.*
- (b) *Pleadings.*
- (c) *Evidence.*
 - 1. Generally.
 - 2. Evidence in aggravation; repetitions; malice.
 - 3. Evidence in mitigation.
- (d) *Instructions.*

I. WHAT CONSTITUTES.

(a) *What words actionable.*

1. To say of another "he has sworn to a damned lie, and I will put him through for it if it costs me all I am worth," is actionable *per se*, as the words imply that the party has forsworn himself under circumstances rendering him punishable: *Crone v. Angell*, 14 M. 840.

2. But if the proceeding is mentioned in which the false swearing is alleged to have taken place, and it is one in which there is no authority to administer an oath, the bystanders must be supposed cognizant of that fact; and to say of another he swore to a lie in such a proceeding would not be actionable *per se*: *Ibid*.

3. To charge one with false swearing and with having been indicted before the grand jury therefor is charging him with the criminal offence of perjury, and is actionable as slander: *Brace v. Brink*, 38 M. 91.

4. The following words were held actionable *per se* and presumptively malicious: "For some months back I have missed things from my laundry — gentlemen's wear. Jennie [the plaintiff] has stolen them, and I have come to search your house:" *Bell v. Fernald*, 71 M. — (July 11, '88).

5. Imputing want of chastity to a woman is actionable *per se*: *Burt v. McBain*, 29 M. 260.

6. A charge of burning one's property to defraud insurers is actionable *per se* whether one is actually insured or not: *Fowler v. Gilbert*, 38 M. 292.

7. Whether or not an oral slander in words that would be actionable as a libel would be actionable without proof of special damage, *quere*: *Weiss v. Whittemore*, 28 M. 866.

(b) *Malice.*

8. Some degree of malice in defendant is necessary to sustain an action for slander.

This malice is sometimes said to be either express or implied, but in both cases it is actual malice or malice in fact, the difference being only in the mode of proof; and in both cases the burden of making this proof rests upon plaintiff: *Huson v. Dale*, 19 M. 17.

9. Express malice is shown by some affirmative proof beyond that of the false and slanderous words, while implied malice is that which is naturally inferred as a presumption of fact from the proof of the publication of the false and injurious charge: *Ibid*.

10. An action for slander to title must be grounded on malice: *Walkley v. Bostwick*, 49 M. 374.

11. Where the evidence in an action for slander was sufficient to warrant a finding that the defendant had not observed due caution, and had assisted considerably in spreading the injurious report, it was held not error to submit to the jury the question whether there was actual malice in the utterance, even though no actual design to injure was shown: *Burt v. McBain*, 29 M. 260.

Further as to malice, see *infra*, II, (c), 2.

(c) *Repetition.*

12. No one can be justified in repeating a slander unless on such evidence as legitimately tends to establish its truth: *Proctor v. Houghtaling*, 37 M. 41.

13. The circulation of vile, defamatory or slanderous language concerning another, and especially concerning a woman's chastity, is not excused by a protest at the time of disbelief, or by a showing that those who had heard the slander did not believe it to be true; it is actionable, and the question of the extent of the responsibility is for the jury, and not to be solved by any presumption of harmlessness: *Burt v. McBain*, 29 M. 260.

As to evidence of repetition, see *infra*, II, (c), 2.

II. PROCEDURE.

As to costs, see COSTS, § 40.

(a) *Parties.*

14. A married woman may bring a sole action for slander: *Leonard v. Pope*, 27 M. 145.

15. A husband may be joined as defendant with his wife in an action for slander committed by her: *Burt v. McBain*, 29 M. 260.

(b) *Pleadings.*

16. A declaration in slander contained the usual inducement, without the averment of any extrinsic facts or circumstances showing

the actionable quality of the words spoken, except that the plaintiff was postmaster at F., and one count charged the defendant with having spoken and published of and concerning the plaintiff as postmaster, etc., that "he did not think Marlatt's resignation or his petition had gone to Washington; he had no doubt they were embezzled at F.;" adding by innuendo ("at the postoffice at F., of which the plaintiff was postmaster, meaning and intending thereby that the plaintiff had delayed and prevented the transmission of the said resignation and petition to the postmaster-general at Washington)," etc. *Held*, that the count was fatally defective, the words charged to have been spoken and published appearing not to be actionable: *Taylor v. Kneeland*, 1 D. 67.

17. The words would have become actionable had the inducement of the declaration further averred that the letters or papers referred to were placed in the postoffice at F., or entrusted to the care of the defendant as postmaster at F., or were passed through said postoffice to their place of destination; since the embezzlement by defendant of papers which so came into his possession is made criminal: *Ibid*.

18. Extrinsic facts or circumstances showing the actionable quality of words not actionable *per se* must be directly averred in the inducement of the declaration: *Ibid*.

19. The office of an innuendo is merely to apply the different parts of the charge contained in the words to the different facts before averred in the inducement. Its truth must always appear from precedent averments, and it must be supported by the inducement and colloquium: *Ibid*.

20. The omission of any averment in a count in slander that the defendant *maliciously* published the matter alleged is cured by verdict, though it would be fatal on special demurrer: *Ibid*.

21. Where, in an action for slander, the declaration set forth the slanderous words, averring that they were uttered "of and to the plaintiff," no colloquium was held to be necessary that they were uttered "of and concerning the plaintiff:" *Osborn v. Forshee*, 22 M. 209.

22. No averment of special damages to show a cause of action is needed where want of chastity has been imputed to a woman. The plaintiff may, without claiming special damages, show that in consequence of the slander she has been excluded from the society in which she had moved, and was affected in mind and health: *Burt v. McBain*, 29 M. 280.

23. A declaration for slander in charging plaintiff with burning his property to defraud insurers need not aver actual insurance, nor need such insurance be proved: *Fowler v. Gilbert*, 38 M. 292.

24. A declaration for slander should be demurred to if the averments of the declaration are not formal enough; and if the language, set forth plainly, shows an intention to slander in the way complained of, it will be *held* sufficient if not demurred to: *Ibid*.

Where the constitution of an incorporated society makes slander against the society an offence, something analogous to slander at law is meant; and in proceedings against a member by the society therefor the words should be set forth: See CORPORATIONS, § 169.

25. Formerly the notice of special matters to be given in evidence was required to contain all the requisites of a special plea in bar; and where, therefore, to a declaration in slander alleging that defendant charged plaintiff with having sworn falsely, defendant pleaded the general issue, and gave notice that he would prove on the trial "that the plaintiff was guilty of the acts charged on and imputed to him by the defendant in the several conversations in the declaration mentioned, and that if the words were uttered and published as charged in the declaration the defendant had good reason for uttering and publishing, and did it from good motives and for justifiable ends," *held*, that the notice was fatally defective, especially in omitting any averment that the plaintiff *wilfully and deliberately* swore falsely: *Thompson v. Bowers*, 1 D. 321.

26. But under the present system of pleading (see H. S. § 7863, which applies to actions for slander as well as to others) a notice of justification need not contain the substance of a special plea or be good on general demurrer; but it is enough if it briefly states the precise nature of the matter of defence: *Cresinger v. Reed*, 25 M. 450.

(c) Evidence.

1. Generally.

27. It is not proper, in an action for slander, to prove the utterance of slanderous words by reading to the witness the words as laid in the declaration and by then interrogating him with regard to them; nor is it within the circuit judge's discretion to permit such mode of examination: *Osborn v. Forshee*, 22 M. 209.

28. The testimony of a witness that he had uttered certain words alleged to be slanderous is so far privileged that it cannot be used

as an admission of the slander in an action therefor against himself: *Ibid*.

29. In an action of slander for words in a letter which contains nothing on its face to show that it is privileged, the burden of proof is on defendant to show that it is so; and where it was a reply to one written to defendant which defendant had not introduced, raising no objection, meanwhile, to plaintiff's failure to call for it, defendant cannot, on the basis of any presumption that his letter was strictly responsive to the other, raise the question of its admissibility unaccompanied by the other by a request to charge that if it was thus strictly responsive and without malice, and written in the ordinary course of business, he is entitled to a verdict: *Day v. Backus*, 81 M. 241.

30. A count in slander alleging that the defendant uttered and published that the plaintiff, who was postmaster at F., embezzled certain papers, is not supported by proof that he said he had no doubt that the papers were embezzled at F., or he thought that the papers were embezzled at the postoffice at F.: *Taylor v. Kneeland*, 1 D. 67.

31. Slanderous words, uttered in a conditional or hypothetical statement, will not support an averment of slanderous words laid as a positive and direct assertion: *Evarts v. Smith*, 19 M. 55.

32. The rule that the use of slanderous words must be proved as alleged in the declaration does not exclude proof of other words not changing their effect: *Brown v. Barnes*, 39 M. 211.

33. The pecuniary standing of defendant in an action for slander may be shown to prove the influence his word would have in the community; but the jury must be cautioned against allowing such evidence to carry too much weight or in itself to swell the amount of damages: *Ibid*.

34. In an action for slander it is not competent to ask a witness who has testified to a conversation held with defendant since the suit began what he understood defendant to mean by his remarks. That is a question for the jury: *Cresinger v. Reed*, 25 M. 450.

35. In an action for slander there is no error in refusing to admit a neighbor's testimony that he never heard it: *Brown v. Barnes*, 39 M. 211.

36. A witness called to prove the speaking of slanderous words upon which suit was brought was required on cross-examination to state the following remark of the plaintiff's: "God knows if H. [the defendant] beats me in this trial I am going to carry it up higher.

I am going to beat him and I hope I will; then he will have to move out and I take possession of the premises." *Held* error, for irrelevancy, though it might perhaps have been proper cross-examination of the plaintiff if on the witness stand: *Proctor v. Houghtaling*, 87 M. 41.

37. In an action for slander in charging plaintiff with being a woman of gross unchastity her character for chastity can only be assailed by testimony of general reputation, and not by proof of particular acts or particular suspicions: *Ibid*.

38. The plaintiff in an action for slander cannot introduce evidence of his general good character and reputation unless it has been attacked; and this is so even though on cross-examination inquiries have been made of him as to specific facts that may tend to affect his good character: *Hitchcock v. Moore*, 70 M. 112 (April 27, '88).

39. A slander is admitted to be false if there is no plea of justification, and evidence of its truth is inadmissible. But where such proof was inadvertently admitted, it was *held* proper to let it be answered: *Fowler v. Gilbert*, 88 M. 292.

40. In an action for slander in accusing plaintiff of burning defendant's barn, the plea of the general issue does not raise the question whether plaintiff burnt it or not; and evidence of threats by plaintiff that the barn would be burned are not admissible, except to show the bias of plaintiff, or in mitigation of damages, if communicated to defendant before the alleged slanderous words were spoken; nor was it proper for defendant's counsel in arguing the case to the jury to state that such threats showed that plaintiff burned the barn: *Hitchcock v. Moore*, 70 M. 112.

41. Irrelevant slanders are not admissible in evidence by way of colorable justification: *Proctor v. Houghtaling*, 87 M. 41.

42. Suit was brought for slander upon a charge that plaintiff had burned his property to defraud insurers. *Held*, that proof of alleged frauds by him against third persons concerning agreements regarding insurance was inadmissible: *Fowler v. Gilbert*, 88 M. 292.

2. Evidence in aggravation; repetitions; malice.

43. The plea or notice of justification is not, though unsustained by proof, evidence of malice and an aggravation of the damages: *Huson v. Dale*, 19 M. 17; *Proctor v. Houghtaling*, 87 M. 41.

44. In an action for slander, plaintiff, after having proved the words alleged, may give in evidence other slanderous words of like import, with a view to show defendant's malice: *Thompson v. Bowers*, 1 D. 321.

45. In an action of slander, evidence may be given of repetitions of the same slander to enhance the damages. Such repetitions constitute practically one slander, aggravated by the enlarged circulation; and a judgment in such a case is a bar against any further action for any such repetition open to proof on the trial: *Leonard v. Pope*, 27 M. 145.

46. In an action for slander it is proper to prove the defendant's admission that she "supposed she had repeated the story:" *Burt v. McBain*, 29 M. 280.

47. Evidence of the repetition of a slander is admissible in aggravation of damages; so is any evidence of actual malice: *Fowler v. Gilbert*, 33 M. 292.

48. The rule that repetitions of a slander may be proved to show malice does not limit the evidence to *verbatim* repetitions, but allows proof of substantially similar slanders likely to make the same impression on the community: *Brown v. Barnes*, 39 M. 211.

49. Evidence is admissible of charges of the same slanderous nature as those relied on and made to the plaintiff himself, whether alone or in the presence of others: *Fowler v. Gilbert*, 38 M. 292.

50. A witness to the uttering of slanderous words cannot testify that he had heard the same and similar remarks extending over a period not limited to the time before the slander, and not shown to have led to the defendant's belief in the truth of what he had said: *Proctor v. Houghtaling*, 37 M. 41.

51. Words spoken by defendant after the commencement of the suit are not admissible in evidence to show malice, unless they expressly refer to those which are the subject-matter of the action, and do not constitute a distinct calumny for which the plaintiff would have a separate right of action: *Taylor v. Kneeland*, 1 D. 67.

52. In an action of slander it is admissible in proof of malice to show that the defendant had admitted that the charge complained of would not have been started if plaintiff had dealt with him differently: *Fowler v. Gilbert*, 38 M. 292.

3. Evidence in mitigation.

53. Where there is no justification for slander there may be matters in mitigation, but as these form no absolute defence they are not

put in issue; the only issues are publication and justification: *Proctor v. Houghtaling*, 37 M. 41.

54. Evidence of the truth or tending to prove the truth of the slanderous words is inadmissible under the general issue in mitigation of damages. So also is evidence that the specific facts in which the slander consisted were communicated to defendant by third persons: *Thompson v. Bowers*, 1 D. 321.

55. To rebut malice and thus to mitigate damages, though not to establish a defence, it is competent to show under the general issue that at the time the words were spoken defendant reasonably believed them to be true. Facts which may tend to establish the truth of the words are not for that reason inadmissible under the general issue. If they tend to rebut malice and are offered for that purpose only, and are not such as might be pleaded in justification, they are admissible. (Disapproving, so far, *supra*, § 54): *Huson v. Dale*, 19 M. 17.

56. Evidence offered in mitigation under the general issue must be treated as involving a conclusive admission that the words are not in fact true; but the defendant may show that he believed them to be true, and introduce facts to show the grounds of such belief: *Ibid*.

57. Defendant may show, under the general issue in mitigation of damages, that previous to the publication of the slanderous words by himself reports to the same effect were in common circulation in the vicinity of plaintiff's residence, and were communicated to defendant: *Farr v. Rasco*, 9 M. 353.

58. Where a witness for plaintiff in slander had testified to the speaking of the words by defendant, and on cross-examination had stated that she had previously heard the story from others, it is proper, on re-examination, to ask from whom she heard it. If the object was to mitigate damages by showing that defendant had only repeated a common rumor, its prevalence became a proper subject of inquiry, and plaintiff had a right, if possible, to trace it back to defendant: *Burt v. McBain*, 29 M. 280.

59. In an action of slander, in which plaintiff was an infant suing by her next friend, it was held not error to exclude evidence that, on the trial of a former cause between the same parties on the same subject-matter, the parties came to and executed an understanding that the two defendants should under oath disclaim all belief in the reports, and that this should be considered a satisfaction of the plaintiff's cause of action and the suit should

be discontinued; it was not admissible in mitigation of damages, as a retraction or apology, or as proving an accord and satisfaction: *Ibid*.

60. Where the words are actionable in themselves, and general damages only are claimed, defendant is not entitled to show in mitigation of damages under the general issue that, "during the six years prior to the suit, inveterate feelings of hostility had existed between the plaintiff and the defendant, and that the plaintiff had taken every opportunity to irritate the defendant:" *Porter v. Henderson*, 11 M. 20.

61. Where the action is for charging plaintiff with perjury, evidence cannot be given by defendant that, on an occasion not appearing to have any connection with the matter in controversy, the plaintiff called him a liar and a perjured wretch: *Ibid*.

62. Nor, where general damages only are claimed, is evidence admissible in mitigation of damages that plaintiff has stated the slander did him no damage: *Ibid*.

63. Defendant cannot give evidence under the general issue of a threat by the plaintiff "that he would ruin and drive him out of town;" which threat came to the knowledge of the defendant previous to the speaking of the words alleged to be slanderous: *Moyer v. Pine*, 4 M. 409.

64. Common reports in circulation in regard to the plaintiff's being suspected, previous to the speaking of slanderous words, of having committed the crime imputed to him, cannot be given for the purpose of contradicting the statement in the declaration that he had not been suspected, until the speaking of the words, of being guilty of the offence charged: *Ibid*.

65. A slanderous remark that is not proved must be held false, and the party guilty of it cannot rely in mitigation upon facts that had nothing to do with his belief when he uttered it: *Proctor v. Houghtaling*, 37 M. 41.

66. Where the words were "he stole my horse," held, that defendant might give evidence in mitigation of his belief in the charge, though the horse referred to belonged not to defendant but to his wife: *Huson v. Dale*, 19 M. 17.

67. In an action for slander, in stating that plaintiff stole defendant's horse, it is inadmissible to introduce the record of a criminal complaint made against plaintiff and others by defendant's wife for stealing the horse which was described in the complaint as her property, and the proceedings under the same, showing that plaintiff, with the other parties charged with the offence, was discharged on

the evidence given for the people. Such record could have no tendency to rebut malice or to mitigate damages: *Ibid*.

(d) *Instructions.*

68. In an action for slander in imputing want of chastity to plaintiff (a young woman), instructions were held not objectionable as assuming facts not proved, in speaking of plaintiff as a sensitive girl, who had suffered in consequence of the slander, and in calling attention to the relative situation of the parties, etc.: *Burt v. McBain*, 29 M. 260.

69. It is not error to submit to the jury the question whether there was actual malice in the utterance of slander, where the evidence is sufficient to warrant a finding that due caution has not been observed by defendant, and that she has assisted considerably in spreading the injurious report, even though no actual design to injure is shown: *Ibid*.

SPECIFIC PERFORMANCE.

I. WHEN GRANTED OR REFUSED.

(a) *In general.*

(b) *Matters relating to the contract.*

1. Illegality or impracticability.
2. Unconscionable agreements;
want of equity; inequality;
inadequate consideration.
3. Mutuality; completeness.
4. Certainty; proof.
5. Fraud and mistake.
6. Changed conditions; waiver;
abandonment.
7. Dower or homestead rights.
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(c) *Laches.*

(d) *Preliminary conditions.*

(e) *For and against whom granted.*

II. PLEADING AND PRACTICE.

(a) *Parties.*

(b) *Pleadings.*

(c) *Decrees.*

I. WHEN GRANTED OR REFUSED.

(a) *In general.*

1. Courts of equity do not as a matter of course decree specific performance of contracts, but exercise a sound discretion in view of all the facts of the case, which discretion is judicial, not arbitrary: *McMurtrie v. Bennette*, H. 124; *Weed v. Terry*, 2 D. 344; *Smith*

v. Lawrence, 15 M. 499; *Rust v. Conrad*, 47 M. 449.

2. Specific performance, even of a binding contract, is not a matter of right: *Chambers v. Livermore*, 15 M. 381.

3. Specific performance is not always a matter of absolute right, and he who insists on it must make out a complete equity: *Chapman v. Morgan*, 55 M. 124.

4. On a contract for the construction of a vessel and the conveyance of one-half thereof, a specific unvalued chattel was paid in advance, and the peculiar provisions of the contract were such that specific performance would remedy a breach more adequately than damages. *Held*, that performance might be decreed: *Peer v. Kean*, 14 M. 354.

5. B. contracted to buy lands of H. and to sell the same to M., whom he put in possession. While there was still something due B. from M., H., instead of conveying the land to b., conveyed it to M., who was irresponsible. *Held*, that B., who was thus deprived of his security for ultimate payment from M., had an equitable right to require of M. a conveyance to himself (B.) in specific performance of the contract made with him (B.) by H.; such conveyance would simply place the parties where, by their contracts, they had agreed to place themselves; and as B. had a right to insist that he be allowed to retain the specific security he contracted for, and that he be not turned over to the contingencies of successive suits at law after his demand had matured, the remedy in equity was alone adequate: *Bird v. Hall*, 80 M. 374.

6. That the contract fixes a penalty for non-performance is no objection to specific performance: *Daily v. Litchfield*, 10 M. 29.

7. Specific performance cannot be granted where a son who had orally agreed to support his parents in consideration of his being entitled to a conveyance from them of whatever estate he might acquire out of the farm profits beyond what they owned at the time, had all such property as he purchased from time to time, and so had under his control, conveyed to his mother, who would not reconvey to him when he asked her to: *Bumpus v. Bumpus*, 53 M. 346.

8. Where both parties to a bill for specific performance proceeded without objection upon a hypothesis that would make a subsequent deed given by the vendor to his co-defendants a cloud upon the title, the supreme court, though holding such deed of no force, and that complainants' remedy at law was ample, affirmed a decree requiring defendants to release to complainants, but without costs

to either party: *Raymond v. Shawboose*, 34 M. 142.

9. A mere agreement to arbitrate cannot be enforced specifically: *McGunn v. Hanlin*, 29 M. 476.

10. Where defendant in a bill for specific performance has a claim for managing the property, this may be compensated by proper allowance; and this course should be followed rather than to defeat the bill, especially in a case where the compensation is to be retained, and not to be paid over by complainant: *Hunt v. Thorn*, 2 M. 213.

11. The vendee in a land contract cannot be compelled, by a bill for specific performance, to accept a doubtful title, and no agreement can be enforced that would require such acceptance unless specially bargained for: *Powell v. Conant*, 33 M. 396.

12. If the vendor can make title to an undivided interest only in lands agreed to be conveyed, the purchaser may pay a proportionate part and have specific performance to that extent, unless there are peculiar equitable reasons to the contrary: *Covell v. Cole*, 16 M. 223.

(b) *Matters relating to the contract.*

1. Illegality or impracticability.

13. A court of equity will not decree a specific performance of an illegal contract: *Quirk v. Thomas*, 6 M. 76, 93, 109.

14. A contract of purchase by a bank in violation of its charter will not be enforced in its favor: *Bank of Michigan v. Niles*, W. 99, 1 D. 401.

15. Equity will not decree the specific execution of a written contract for the sale of land made by a special agent who has exceeded his authority: *Chamberlin v. Darragh*, W. 149.

16. And where the agent acted for his trustee in selling the land, and the bill charged that the contract was made by him as agent for the trustee, it was *held* that he could not be required to convey his equitable interest as *cestui que trust*, notwithstanding the contract did not on its face disclose the agency: *Ibid*.

17. If a case is one in which either the provisions of the contract or the law would permit to a party the option to nullify a decree for specific performance, should one be granted, the court will not do a vain thing by granting one: *Rust v. Conrad*, 47 M. 449.

18. Where, therefore, a contract for a lease contained a provision that the lease, when

given, might at any time be terminated by the lessees, either as to the whole of the land or a part thereof, on giving thirty days' notice, *held*, that this option is a conclusive answer to a bill by those who would be lessees for the specific performance of the contract: *Ibid*.

19. Specific performance of an expired lease may be granted where the parties may have rights requiring its determination: *Switzer v. Gardner*, 41 M. 164.

20. Where an agreement to enter into a partnership is silent as to the duration thereof, it will not be specifically enforced, since such a partnership might be dissolved at the will of either partner as soon as formed: *Buck v. Smith*, 29 M. 166.

21. Courts of equity cannot assume to specifically enforce an agreement to enter into a copartnership, and, as a member of the firm, to exercise for it personal skill and judgment in the control and management according to the shifting needs of property and business; they will not, therefore, enforce the other side of such a contract: *Ibid*.

22. A decree for specific performance is impracticable where the contract is for the support of a parent in consideration of his devising his land to the child, and involves continuous duties that a court of equity cannot regulate, and a conveyance by will, which no court can compel: *Bourget v. Monroe*, 58 M. 563.

23. A condition that a railroad company shall build and maintain a station-house on land conveyed, suitable for the convenience of the public, and that trains shall stop, freight and passengers be taken, etc., is not specifically enforceable; courts cannot manage railroad-ing details: *Blanchard v. Detroit, L. & L. M. R. Co.*, 31 M. 43.

24. Specific performance will seldom be granted where there is not a mutual liability to the jurisdiction, or where the court has not the means of seeing that its decree shall be carried out: *Voorhies v. Frisbie*, 25 M. 476.

2. Unconscionable agreements; want of equity; inequality; inadequate consideration.

25. Specific performance of unconscionable contracts will not be enforced: *Chambers v. Livermore*, 15 M. 381; *Myer v. Hart*, 40 M. 517.

26. Specific performance will be refused where it is clearly inequitable to grant it: *Munch v. Shabel*, 37 M. 166.

27. Although equity has power to correct a

clerical mistake in an award and to decree specific performance, such performance will not be enforced where there are equitable objections: *Buys v. Eberhardt*, 3 M. 524.

28. Complainant purchased an interest in certain patents at auction, with full notice of certain claims and encumbrances. The encumbrancer's title was, under the patent laws, invalid. On a bill for specific performance, claiming an absolute assignment of entire interest, *held*, the complainant could not thus demand unconscientious advantages beyond those he had a right to expect when the sale was made: *Eames v. Eames*, 16 M. 348.

29. If the contract is unequal, if its consideration is inadequate, if it contains unreasonable provisions, or if there are indications of overreaching or unfairness, a court of equity will refuse to interfere for specific performance and leave the party to his remedy at law: *Rust v. Conrad*, 47 M. 449.

30. A. and B., having mutual claims derived from distinct sources to land the title of which depended upon a release or confirmation to be obtained from the United States, entered into a sealed agreement, reciting their respective claims and agreeing to share equally in the land if the title should be confirmed, or in the money or compensation which might be awarded in lieu of it. The claim having been subsequently confirmed, and A. having obtained a patent in his own name, B.'s heirs filed a bill for specific performance. *Held*, that as the agreement recited fully the respective interests of the parties in the estate, A. could not excuse himself from a specific performance on the ground of A.'s inequality of interest at the time of making the agreement: *Hunt v. Thorn*, 2 M. 213.

31. A farm was purchased at \$10,000, of which \$1,000 was to be paid down and a mortgage given for the balance payable in ten years. The purchaser was to be at liberty to make sales from the land, and to have the parcel sold released from the mortgage on paying a sum proportionate to the quantity sold. It appeared, however, that some parts of the farm were greatly more valuable than others, and that the purchaser was not bound personally to make payment. *Held*, that the contract was unequal and unreasonable, and equity would not enforce it: *Chambers v. Livermore*, 15 M. 381.

32. Suit for specific performance was brought against one who had agreed to convey, but refused to execute a deed on the ground that his title was subject to a reservation of mineral rights of which complainant knew, but he himself did not, at the time of

making the agreement, and that complainant had told him that it was not necessary to expressly except a certain easement that was appurtenant to his homestead. It was not shown that complainant had acted fraudulently. Complainant consented to accept performance in precise accordance with defendant's maximum claims, and to take a deed reserving the easement and excepting the right to minerals, and a decree was made accordingly, without costs to either party. *Held*, that defendant could not complain: *Anderson v. Kennedy*, 51 M. 467.

33. As a general rule, inadequacy of consideration is no defence to specific performance: *Chambers v. Livermore*, 15 M. 381.

34. But where the price agreed for in the contract greatly differs from the value, it is an ingredient which, associated with others, will contribute to prevent the interference of a court of equity: *Wallace v. Pidge*, 4 M. 570.

35. Inadequacy of price, when it is so gross and palpable as of itself to appear evidence of actual fraud, may be sufficient to induce the court to stay the exercise of its discretionary power to enforce a specific performance and leave the party to his remedy at law; but inadequacy of price merely, without being such as to prove fraud conclusively, is not a good objection to specific performance: *Burtch v. Hogge*, H. 81.

36. The question of enforcing specific performance of a voluntary contract considered by a divided court: *Quirk v. Thomas*, 6 M. 76.

3. Mutuality; completeness.

37. The contract sought to be enforced must be mutual, and the tie reciprocal, or equity will not enforce performance: *McMurtree v. Bennette*, H. 124.

38. As a general rule a court of equity will not decree a specific performance where the remedy is not mutual, and one party only is bound by the agreement: *Hawley v. Sheldon*, H. 420.

39. A bill will not lie to enforce specifically the giving of a loan where there was no complete agreement, but only a misleading representation that means would be furnished to enable complainant to redeem from a mortgage: *Wilson v. Eggleston*, 27 M. 257.

40. C. paid M. ten dollars for the refusal until February 1 of certain land at \$1,000 or such other sum as should then be agreed on. If M. should have another offer of the same sum, C. was to make up his mind in ten days, and in ten days more pay for the land or lose it. Afterward C. tried to induce M.'s agent to

persuade M. to sell for less. On January 29 he wrote the agent that he was ready to pay over the money *as he had talked* as soon as he should get the deed. The agent received this letter February 1, and on February 5 replied that he did not regard it as an offer to carry out the contract and that M. would not take less than \$1,000. Next day the agent was offered that sum by another man and accepted it. The agent had also notified C. on January 30 that M. would not take less, and on February 2 M. had answered in a somewhat ambiguous letter that might perhaps indicate a purpose to accept. *Held*, that there were no equities which would enable C. to maintain against M. a bill for specific performance: *Chapman v. Morgan*, 55 M. 124.

41. Equity will not enforce specific performance of a contract upon one side where the duties to be performed on the other side are such as to be incapable of being specifically enforced: *Buck v. Smith*, 29 M. 166.

42. Courts cannot perfect or enforce contracts from which essential details are omitted: *Gates v. Gamble*, 53 M. 181.

43. A court of equity cannot enforce a contract specifically unless it can be done mutually and completely and so as to secure substantially beyond question all that the parties contemplate: *Bourget v. Monroe*, 58 M. 563.

44. In suit for specific performance of a parol contract to convey lands an objection on the ground of want of mutuality is of no force if the part of the contract difficult of enforcement has actually been fulfilled: *Welch v. Whelpley*, 62 M. 15.

45. Specific performance cannot be compelled except of a completed agreement; it cannot be had upon a memorandum that merely states terms which, if accepted, would be the foundation of further treaty between the parties with reference to essential particulars: *Wardell v. Williams*, 62 M. 50.

46. There is no absolute equity to enforce a contract not mutually complete; *so held* where two parties contracted to exchange lands, which agreement was reduced to writing, but where the writing omitted the condition that one of the parties was to receive \$500 as a further consideration for the exchange: *Hall v. Loomis*, 63 M. 709.

47. Specific performance of a land contract may be refused for want of mutuality where it is so drawn as to leave it optional with the grantor to retain or convey the property: *Maynard v. Brown*, 41 M. 298.

48. A contract to exchange a parcel of land for two parcels separately owned by two persons is entire, and if one of the two has sold

to a *bona fide* purchaser so that the contract cannot be enforced as to him, neither can it as to the other: *Youell v. Allen*, 18 M. 107.

49. A bill will not lie for the specific performance of particular stipulations to be separated and dealt with apart from the rest of the contract, if they do not distinctly appear by the contract to stand by themselves wholly unaffected by any others; a party to a contract who insists upon parts of it must abide by it in its entirety: *Baldwin v. Fletcher*, 48 M. 604.

4. Certainty; proof.

50. The jurisdiction of equity in specific performance proceeds on the supposition that the parties have not only agreed as between themselves upon every material matter, but that the matters are such, and the subjects of enforcement are so indicated, either directly or by reference to something else, or by legitimate implication, that the court may place in their proper relations all the essential elements and proceed intelligently and practically in carrying into execution the very things to be performed. But if they are in their nature incapable of execution by the court, or if needful specifications are omitted or material matters left so obscure or undefined or bare of detail, or if the subjects of the agreement are so conflicting or incongruous, that the court cannot say whether or not the minds of the parties met on all the essential particulars, or if they did, upon what substantial terms, the case is not one for specific performance: *Blanchard v. Detroit, L. & L. M. R. Co.*, 81 M. 43.

51. A bill in equity to enforce an oral agreement for a lien upon real estate will not be sustained if the terms of the agreement are not sufficiently clear and specific to enable the court to give effect to the understanding of the parties: *McClintock v. Laing*, 22 M. 212.

52. A parol contract will not be enforced unless it is certain in all its essential particulars: *McMurtrie v. Bennette*, H. 124; *Millerd v. Ramsdell*, H. 373; *Bomier v. Caldwell*, 8 M. 463.

53. Equity will refuse to enforce even a binding contract, and will leave a party to his remedy at law, if not clearly satisfied that the contract embodies the real understanding of the parties: *Chambers v. Livermore*, 15 M. 381.

54. If an agreement for the purchase of lands be vague and uncertain or the evidence in support of the same unsatisfactory, a court of equity will not enforce it, but will leave the party to his remedy at law: *Millerd v. Ramsdell*, H. 373.

55. A vague intention on a father's part to give certain lands at some time or other to a son, in fulfilment of one of those family arrangements that are understood to rest simply on the will of the parties, gives no basis for a bill to enforce specific performance of a contract: *Wright v. Wright*, 31 M. 880.

56. Contracts that are so vague in their terms that no one but the parties can say how great an expenditure they contemplate cannot be specifically enforced by the courts, but must rest on the honor or good faith of the parties: *Bumpus v. Bumpus*, 58 M. 846.

57. On a bill for specific performance a stipulation in the contract that the vendee shall "improve the premises" will be treated as immaterial, being too indefinite to be enforced: *Morris v. Hoyt*, 11 M. 9.

58. A bill in equity alleged that a patentee who had sold out his remaining rights to complainant had previously assigned to another person, with whom he is joined as defendant; he had obtained a re-issue of the patent to this assignee in consideration that the latter would manufacture enough of the patented machines to supply the market, license others to manufacture them, increase and report sales, pay a certain royalty, and prosecute infringers. The bill alleged that the assignee had neglected to do so; and waiving sworn answer prayed that he account for sales and settlements; that the assignment and re-issue be declared void as to the interests of the patentee and complainant, and that the assignee be ordered to re-assign or assign to complainant, or authorize complainant to prosecute or compromise or settle with infringers. A demurrer to this bill was sustained on the ground that it alleged a vague and contradictory agreement of which specific performance could not be granted, and that the grievances were susceptible of legal remedy: *Torrent v. Rodgers*, 39 M. 85.

59. A son agreed with his father to remove with his family to the latter's house, take care of the father and turn over to him annually a certain proportion of the crops, in consideration of all which the father was to deed to the son a certain parcel of land, which he promised to do, but did not. The only uncertainty related to the time at which the deed was to be given. Held, that the case was sufficient to sustain a bill for specific performance against the administrator and heirs at law of the father: *Lamb v. Hinman*, 46 M. 112.

60. A father's agreement with his daughter and her husband to give them land and help them improve it if they would settle upon it and live there, the husband to give up other

engagements, though somewhat vague as not fixing any time for the continuance of the residence or any extent for the improvements to be made, is not altogether indefinite when considered in the light of ordinary conduct; and it must be considered as fulfilled by the wife and husband when they in good faith fix their home upon the land: *Welch v. Whelpley*, 63 M. 15.

61. Courts will not, unless in clear cases, establish and protect a way for passage over private property on the ground of enforcing specific performance of a partly executed oral agreement, or of declaring and protecting a prescriptive right resulting from a use which originally sprang from such an agreement: *Fox v. Pierce*, 50 M. 500.

62. Where the consideration of a contract for the sale of pine land consisted not only of a money payment but of a joint arrangement between the parties for lumbering the land, its specific performance could not be enforced in the absence of any agreement or usage as to the time to be allowed for the lumbering; and, as the contract is not severable, no portion of it could be specifically enforced: *Gates v. Gamble*, 58 M. 181.

63. Specific performance will be refused if the description of the land is imperfect: *Munsell v. Loree*, 21 M. 491.

64. Specific performance was asked of a contract to convey a strip of land described as "four rods wide along the St. Coasme line road, or if necessary to cover a certain ditch or water-course the said strip of land is to be five rods, . . . or any other width not to exceed five rods." The bill stated the amount of land as "five rods wide . . . and of sufficient width to cover a ditch or water-course, . . . said strip being about five rods wide and being two and twenty-hundredths acres of land." The answer denied the statement of acreage. The decree required a conveyance of four rods "containing two acres and twenty-hundredths of an acre." *Held*, that the contract was too uncertain to be enforced without extrinsic evidence, and that the decree, which followed neither contract nor bill, was unwarranted: *Wiegert v. Franck*, 56 M. 200.

65. To warrant relief the contract must be clearly and satisfactorily established: *Ritson v. Dodge*, 33 M. 463.

66. The enforcement of an alleged agreement to execute a mortgage upon land which complainant, defendant's father, had bought in defendant's name and paid for, requires clear and satisfactory proof: *Babcock v. Twist*, 19 M. 516.

67. A bill filed by one member of a firm to enforce an alleged express agreement under which the firm was to own certain lands bought by another partner in his own name with money advanced by the firm cannot be maintained unless such express agreement is proved: *Russell v. Miller*, 26 M. 1.

68. Specific performance of a parol contract will not be granted unless it is substantially the contract set forth in the bill and is clearly proved: *Wilson v. Wilson*, 6 M. 9; *Brown v. Brown*, 47 M. 378; *Dragoo v. Dragoo*, 50 M. 573.

69. When specific performance is sought of a contract for the conveyance of lands, and it appears that the terms of the agreement were embodied in formal papers which are in proof though not delivered, there will be less hesitation in giving relief than if the terms were all oral and to be made out on the recollection of witnesses: *Murphy v. Stever*, 47 M. 523.

70. Where husband and wife filed a bill on behalf of the wife, alleging a parol agreement on the part of the deviser of defendant to convey certain lands to the wife, and asking its specific performance, but from the evidence it appeared that the agreement was to convey to the husband, the bill was dismissed, notwithstanding there was evidence in the case that the husband afterwards directed the conveyance to be made to the wife, and the other party assented to its being so made: *Wilson v. Wilson*, 6 M. 9.

71. A man and his wife filed a bill against his wife's father and sister for the specific performance of an alleged oral agreement by the father to convey to them the premises whereon they lived when the dwelling-house should be ready for occupancy. The father claimed that complainants held as tenants merely. *Held*, that the fact that the taxes were assessed against the father was not conclusive evidence against complainants; that the payment of such taxes by the son-in-law was a significant fact in their favor; and that the presence of the other daughter at the time of the making of the agreement charged her with notice of the nature of complainant's possession and claim: *Fairfield v. Barbour*, 51 M. 57.

72. A widow sued her deceased husband's father for specific performance of an alleged contract under which land was conveyed to defendant to be afterwards conveyed to complainant. Defendant's answer averred that the lands were in fact conveyed to him in trust for his son's infant children. The testimony was conflicting, but it appeared that deceased had in a measure provided for his wife by a life insurance, and had conveyed to her

the homestead. *Held*, that it was probable that he would have made some provision for his children, and the bill was dismissed: *Green v. Begole*, 70 M. 602.

Strong proof required where performance of gift is sought: See *GIFTS*, § 17.

5. Fraud and mistake.

73. It requires very strong equities to induce a court to refuse to enforce a written contract, even where a mistake is alleged to have been made in drawing it up: *Rogers v. Odell*, 36 M. 411.

74. Whether a complainant in a bill for specific performance can have a mistake in the contract corrected, *quere*: *Cliner v. Hovey*, 15 M. 18.

75. Whether a complainant can be allowed to show by parol a mistake in a contract with a view to having it reformed and then enforced, *quere*: *Chambers v. Livermore*, 15 M. 381.

76. If a material error in a written contract for the conveyance of lands can be corrected on parol evidence in a suit for the specific performance of the contract, and performance decreed according to the understanding as found upon such evidence, it should only be done where the mistake is made out beyond cavil: *Youell v. Allen*, 18 M. 107.

77. An intentional omission in a deed founded upon an oral land contract may be corrected by a decree of specific performance; and if the grantee takes possession he will be regarded as in possession of the whole, whether the actual possession extends to the whole or not: *Goodenow v. Curtis*, 18 M. 298.

78. A parol agreement was made for the sale to complainant of certain premises by a well-known name, such premises being an enclosed piece of land containing several lots. In the conveyance one of the lots was intentionally omitted by the vendor, unknown to the vendee, who went into possession of the whole. A conveyance of the omitted parcel was decreed: *Ibid*.

79. If one contracts to convey land, but by mistake the land is not described in the contract, a *bona fide* purchaser from him, who bought without knowledge of the mistake, cannot be compelled to perform the contract: *Youell v. Allen*, 18 M. 107.

80. A parol contract was made for the sale of land, and was carried out by giving a deed which was ineffectual for misdescription. The land was afterwards levied upon and sold on execution, and the contract purchaser filed a bill to enjoin an action of ejectment by

the execution purchaser to correct the mistake in the deed, and to have the deed on execution set aside as clouding his title. *Held* that, to entitle complainant to enforce the parol contract as against the owner of the legal title, he must show (1) a contract the terms of which are clear and complete, so that no reasonable doubt can exist respecting its enforcement according to the understanding of the parties, if enforcement seems equitable; (2) such acts of part performance as, according to equitable principles, will justify its enforcement notwithstanding the failure to comply with the statute of frauds in making it; (3) the payment of the purchase price: *Kinyon v. Young*, 44 M. 339.

81. If a contract by fraud or mistake includes more than the vendor agreed to sell, it will not be enforced in equity, though the average estimate of witnesses makes the value of the property no more than was to be paid: *Chambers v. Livermore*, 15 M. 381.

82. A mistake may be shown by parol as a defence to the specific performance of a written instrument: *Ibid*.; *Berry v. Whitney*, 40 M. 65.

6. Changed conditions; waiver; abandonment.

83. A man agreed to let his married daughter and her family live on a lot he owned if she would support him during his life, and also promised that the land should be hers after his death. She and her children died in his life-time, however, and the old man thereupon turned her husband off the premises. The husband as sole heir to his wife and children professed his readiness to fulfil the agreement to support him, and demanded specific performance or compensation. *Held*, that his bill therefor would not lie: *Bourget v. Monroe*, 58 M. 563.

84. A., an omnibus proprietor, and B., C., D. and E., each the proprietor of a hotel in a certain city, entered into a written agreement whereby A. engaged to run impartially for five years an omnibus line to convey guests to and from the depot and hotels at a specified rate, the hotel keepers agreeing to sell to him their omnibuses and teams, and to refrain from running such lines in opposition to his business. A. bought their omnibuses, etc., and set up his line. Afterwards B.'s hotel changed hands, a new hotel was opened, and C., the only one of the hotel keepers who owned his hotel or whose tenure would necessarily extend through the five years, assigned his business to his sons; and they, claiming

that A. had discriminated against their hotel, started a free line. *Held*, in a suit by A., that equity would not enjoin them from running such line; nor could a specific performance of the contract be decreed: *Pingle v. Conner*, 66 M. 187.

85. Specific performance will not be refused as inequitable because of the fluctuation of values, where the court has no means of knowing what bearing the terms of the contract had on the negotiations of the parties: *Nims v. Vaughn*, 40 M. 356.

86. A logging contract between A. on one side and a firm composed of A. and B. on the other cannot be specifically enforced after the death of A. in behalf of his personal representatives, because a court of equity has no means of seeing to the execution of such a contract, and the judgment and business faculty of the deceased partner cannot be supplied: *Roberts v. Kelsey*, 38 M. 602.

87. A defendant cannot resist the specific performance of a contract on a plea that his expectations of aid in money, etc., from the other party formed the sole inducement and consideration to him of entering into the contract, where it appears that these expectations were merely the operations of his own mind, and not raised by any promise or suggestion of the other party: *Hunt v. Thorn*, 2 M. 213.

88. Specific performance of an oral agreement to renew a lease for three years will not be allowed where it appears that, on the expiration of the first holding, the tenant accepted a written lease for one year only: *Stuebben v. Granger*, 63 M. 306.

89. A woman was indebted upon a promissory note signed by herself and another person jointly. Her creditor began suit upon it, but she secured its payment by giving him a contract whereby he was to have the use of certain farm property, in which she had a life interest, until the reasonable rents thereof should pay the debt. He however went on with his suit without the knowledge of the defendants, and took judgment. He leased the farm on shares, but his tenant finally left, selling to the woman his interest in the crops then growing. The creditor then levied execution on the property of the joint maker, but the latter obtained a decree forever staying collection. In this proceeding the woman was not made a party, and was therefore not bound by it. The creditor in answering it stated that he had abandoned all his rights under the contract to the woman, and that she had continued to occupy the farm; but he

afterward filed a bill against her for the enforcement of the contract. *Held* that, having abandoned his rights therein, his bill would not lie: *Kimmerle v. Hass*, 53 M. 341.

7. Dower or homestead rights.

90. Equity will not compel the specific performance by a husband of his agreement to procure his wife to join him in the conveyance of real estate: *Weed v. Terry*, 2 D. 344 (Disaffirming, on this point, W. 501.)

91. A husband's contract that his wife shall release her dower cannot be enforced in equity: *Buchoz v. Walker*, 19 M. 224.

92. A contract to convey one's homestead, not signed by the wife, will not be enforced; and where the contract included other lands which would be subject to the wife's contingent right of dower *held*, that the adjustment of compensation with decree for partial performance would be so difficult that it ought not to be attempted: *Phillips v. Stauch*, 20 M. 369.

93. A contract, not signed by the wife, to convey land occupied as a homestead will not be specifically enforced; nor, though the value of the property is greater than the maximum allowed as a homestead, can a partial performance as to the excess be decreed, the adjustment of compensation being too difficult: *Hall v. Loomis*, 63 M. 709.

94. Where the husband causes lands to be conveyed to the wife, which he holds under a contract of purchase and which he has agreed to convey to complainant, and she was aware of his contract and paid no consideration, specific performance may be decreed against her: *Daily v. Litchfield*, 10 M. 29.

95. A man made a land contract covering eighty acres on which he lived, but not signed by his wife. Husband and wife afterward joined in conveying the same property to another person. The homestead had never been set apart. The whole land was subject to mortgages, in which the wife had joined. A suit for specific performance was brought by the party to whom the contract was given, and the party to whom conveyance had been made defended, but did not ask that any homestead right should be set off to him or protected. *Held*, therefore, that the court would not interpose or protect any; and as the homestead right had been lost by the grantors, and as the defence actually set up was insufficient, specific performance was decreed in favor of the complainant: *Stevenson v. Jackson*, 40 M. 702.

8. Parol contracts; part performance.¹

96. The ground of the interference of equity to enforce a specific performance of a parol contract to convey land is not simply that there is proof of the existence of the agreement, but that there is fraud in refusing the completion of an agreement partly performed: *McMurtrie v. Bennette*, H. 124.

97. An oral agreement to advance money to purchase lands and to remove incumbrances on them, and ultimately to transfer them to another on repayment where the latter was in possession, and did no act to his own prejudice, will not be specifically enforced: *Moote v. Scriven*, 38 M. 500.

98. Part performance takes out of the statute an oral contract for the sale of land, and authorizes specific performance: *Scott v. Bush*, 26 M. 418.

99. Redress is not granted on a parol contract for a part performance capable of full pecuniary measurement; e. g., the selection of swamp-lands under a parol contract that the party making the selection shall have an interest in them: *Webster v. Gray*, 37 M. 37.

100. Nor, in such case, does the fact that such party has allowed his legal remedy to become outlawed entitle him to relief in equity: *Ibid*.

101. If a party sets up part performance to take a case out of the statute, he must show acts unequivocally referring to and resulting from that agreement, such as the party would not have done unless on account of that very agreement and with a view to its performance; and the agreement set up must appear to be the same with the one partly performed; there must be no uncertainty or equivocation in the case: *McMurtrie v. Bennette*, H. 124; *Millerd v. Ramsdell*, H. 373.

102. Under an oral contract to convey a parcel of land to a wife in consideration of her joining her husband in a conveyance of a homestead, the execution of such conveyance is an act of part performance sufficient to take the case out of the statute of frauds: *Farwell v. Johnston*, 34 M. 242.

103. An arrangement between a step-son just come of age, and about to leave home and set up for himself, and his step-father that if the former would stay with the latter and work the farm and take care of the family he should have in consideration thereof a deed of

one-half the farm, which is shown by the evidence to have been a distinct and definite agreement as to the land and the consideration and not a vague expectation, will be sustained and specifically enforced after a substantial performance of the consideration: *Twiss v. George*, 38 M. 253.

104. An oral agreement to convey land, being void under the statute of frauds, a bill against a wife to compel a conveyance, even though her husband made the agreement and received the consideration with her full knowledge and consent, cannot be maintained where there is no such part performance as will take the case out of the statute: *Peckham v. Balch*, 49 M. 179.

105. Specific performance cannot be granted on the basis of a parol contract, unless there have been important acts of part performance raising a strong equity in complainant's favor: *Dragoo v. Dragoo*, 50 M. 573.

106. Where the vendee remains in possession under an oral contract of purchase, equity will enforce the contract against him by compelling payment of the purchase price: *Curran v. Rogers*, 35 M. 221.

107. The delivery of possession under parol agreement relating to lands is an act of part performance: *Weed v. Terry*, W. 501, 2 D. 344; *Miner v. O'Harrow*, 60 M. 91.

108. Where one goes into possession of land under an oral contract of purchase, makes payments on the contract and removes buildings or timber, there has been such a possession and part performance as entitles the contract to be enforced in equity: *Cilley v. Burkholder*, 41 M. 749.

109. It seems that the acts of a vendee in taking possession and cutting timber under the assumed authority of an invalid contract is a sufficient part performance to justify a decree that he should pay the purchase price; especially as the cutting renders it impossible to place the vendors in *statu quo*: *Dickinson v. Wright*, 56 M. 42.

110. Where, under a parol agreement to convey land, the purchase money had been paid, possession taken and valuable improvements made, these acts of part performance were held to be sufficient to take the case out of the statute of frauds, and to entitle the purchaser to a decree for specific performance: *Burtch v. Hogge*, H. 31.

111. Where, under a parol contract for the purchase and conveyance of lands, the vendor

¹ H. S. § 6183. Nothing in this chapter (the statute of frauds relating to conveyances and agreements as to land) contained shall be construed to abridge the powers of the court of chancery to compel the specific performance of agreements in cases of part performance of such agreements.

had caused the land to be surveyed, received upwards of one-half the purchase price, put the vendee in possession and had permitted him to retain that possession for several years in reliance upon the contract, and without taking any steps to put an end to it, *held*, that these acts of the vendor constituted such acts of part performance as to take the case out of the operation of the statute of frauds, and entitle the vendee to a specific performance of the contract: *Bomier v. Caldwell*, H. 67, 8 M. 463.

112. Where a wife bargains for the purchase of the undivided half of lands of which the husband is owner of the undivided half and in the occupancy, and from the time of the bargain occupies and claims the land with him, she may be deemed in possession under the contract: *Murphy v. Stever*, 47 M. 522.

113. Where the husband under such circumstances goes on and makes valuable improvements, relying on the wife's purchase, the wife in a suit by her for specific performance should have the benefit of those improvements as she would have had if they had been paid for in part by herself: *Ibid*.

114. Where the parties claimed the same land under conflicting titles and made a parol agreement for a division, and each took possession of the part set off to him, a specific performance was decreed: *Weed v. Terry*, W. 501, 2 D. 344.

115. A woman of small business experience bought land and gave back a purchase-money mortgage for part of the price. An adverse claim arose, and the vendor did not protect her. She did not pay her mortgage when it was due and the vendor foreclosed, agreeing, however, by parol that she might make payment afterwards. She was left in possession, cultivating and improving the land. *Held* that, on her bill for specific performance of the parol agreement, she was entitled to a decree which would be the same in effect as permitting her to redeem: *Potter v. Brown*, 50 M. 436.

116. Work done in raising crops on wild land partially brought under imperfect cultivation is not very conclusive as evidence of possession under a contract of purchase—especially not where it is shown that the party was at once dispossessed of his occupation, and a part of his crop appropriated by the alleged vendor: *Ritson v. Dodge*, 33 M. 463.

117. Possession of land subsequent to an alleged parol gift cannot avail a party who seeks specific performance if it is sufficiently

explained by the fact that the donee is the donor's son: *Jones v. Tyler*, 6 M. 364.

118. Specific performance will be refused if the evidence of possession relied upon as part performance is uncertain as to location or equivocal or unsatisfactory in quality: *Munsell v. Loree*, 21 M. 491.

119. The reason why taking possession of land under an oral contract is such part performance of the contract as will sustain a bill for its specific performance, when payment of the purchase price is not, is that in the former case there is no certain basis for estimating damages for the breach: *Lamb v. Hinman*, 46 M. 112.

120. Payment of consideration for land sold under an oral agreement will not always take the case out of the statute; nor will possession where the purchaser, as a tenant in common, merely remains in possession. Acts done as an owner and in reliance upon an ownership, and for which damages will not be adequate compensation, are also necessary to entitle a party to the enforcement of such an agreement: *Peckham v. Balch*, 49 M. 179.

121. Part payment of the purchase price is not of itself sufficient to warrant a decree for the specific performance of a parol contract for the purchase of lands: *McMurtrie v. Bennette*, H. 124; *Murphy v. Stever*, 47 M. 523.

9. Forfeiture; default; when time essential.

122. Where specific performance of a contract for land that is valuable for its timber is resisted on the ground that the vendees have forfeited it by taking timber off in violation of it, and the fact is admitted, the justification that a parol agreement was made under which the timber could be removed if the time of payment was hastened must be very clearly shown: *Stickney v. Parmenter*, 35 M. 237.

123. The vendor will not be allowed to forfeit the contract for non-payment when, not having the title to convey, he is not in a position to perform on his own part: *Converse v. Blumrich*, 14 M. 109.

124. G. made a contract with H. for two parcels of pine lands, and at the same time contracted with F. & A. to sell them lumber from one of the parcels if they would advance him money to make payment. The first contract was not to be assigned without H.'s consent on pain of forfeiture, but with such consent it was assigned to F. & A. as security, so far as related to the parcel from which their

lumber was to be taken. The lumber contract was extended, and G. sought to sell the lumber from the other parcel, first to F. & A., and afterwards to Y. & Z.; but an arrangement with Y. & Z. was prevented by F. & A., who claimed that their assignment covered both parcels. Shortly afterwards H.'s agent notified G. that the land contract was forfeited, and having done so conveyed one parcel to F. and contracted to sell him the other for the amount remaining unpaid on F.'s contract. G. then filed a bill for specific performance, impleading F. & A. with H., and obtained a decree from which only F. & A. appealed. *Held*, that the rights of F. & A. were confined to the first parcel; that, as the forfeiture was evidently declared for the purpose of enabling F. to get the land, and as F. & A. were bound to use their security for G.'s benefit, subject only to their own claim against him, and could not obtain a complete title without leaving him a right of redemption, the decree would not be disturbed: *Gamble v. Folsom*, 49 M. 141.

125. Where the vendee had agreed to pay all taxes it was *held*, on a bill for specific performance, that the purchase price having been paid the vendor had no concern with the payment of taxes, as he could not be compelled to warrant against them, and he did not aver or pretend that he had been made personally liable for them: *Richmond v. Robinson*, 12 M. 193.

126. Where the vendee in a land contract has been in default in his payments, specific performance is not necessarily compelled if the other party has not also been in fault: *Richards v. White*, 44 M. 622.

127. A party to a contract after being grossly in default has no absolute right to its enforcement: *Russell v. Nester*, 46 M. 290.

128. The vendor of land, after warning the purchaser, who was grossly in default, sold the premises to others who knew the facts but purchased in good faith, paying a sum which would not exceed the amount remaining due from the former purchaser, and which was all that could have been obtained if they had been sold on foreclosure. The former purchaser did not warn the later ones against proceeding to use the lands. *Held*, that a decree for specific performance of the first contract, on a bill against the vendor and the later purchaser, was not equitable: *Ibid*.

129. Time is not usually so far of the essence of a contract that failure to perform within the time fixed will necessarily forfeit it; but when a vendee fails to perform his obligations relief is not a matter of right and will not be granted if, under all the circumstances

including the conduct of the parties, it does not seem just and reasonable: *Gram v. Wasey*, 45 M. 223.

130. Time is not considered in equity as of the essence of a contract unless the parties have expressly stipulated that it shall be, or unless there has been culpable negligence or wilful delay on complainant's part: *Wallace v. Pidge*, 4 M. 570.

131. Time, place and mode of payment are not considered matters of substance, unless by express stipulation of the parties they are declared to be so, or unless from the special nature of the case and the necessary intention and understanding between the parties they must be deemed material. Therefore, though the contract varies in these particulars from that set out in the bill, if it corresponds in other respects the court may enforce it: *Bomier v. Caldwell*, 8 M. 463.

132. Where the time fixed in a land contract for the delivery of the deed was uncertain — "being on or before Aug. 31, 1849" — and was in August, 1849, extended two years, after the expiration of which extension the vendee received partial payments from the purchaser, who subsequently asked for further time, which request the vendor would neither expressly grant nor refuse. *Held* that, after the parties had so dealt together, one of them would not be allowed to obtain an advantage of the other by suddenly considering time material without proper notice of such an intention: *Wallace v. Pidge*, 4 M. 570.

133. Time cannot be made essential in a contract merely by so declaring, if it would be unconscionable to allow it. Parties may stipulate to make it so, where the stipulation is reasonable, but if the stipulation is not reasonable, courts will not regard it: *Richmond v. Robinson*, 12 M. 193.

134. A provision that, on the failure of the vendee to fulfil the agreements on his part at the times specified, the vendor may re-enter and take possession of the land, all rights of the vendee under the contract shall be null and void, and all payments and improvements made be forfeited, does not make time so far of the essence of the contract as that all rights of the vendee become, *ipso facto*, forfeited merely by a failure to pay at the times agreed upon without any act on the part of vendor indicating an intention to insist upon the forfeiture: *Morris v. Hoyt*, 11 M. 9.

135. Under such a provision, the only mode by which the vendor can forfeit the rights of the vendee is by re-entering and taking possession of the land, or some act equivalent thereto: *Ibid*.

136. A contract that empowers the vendor, on default being made in payment to terminate it, is not forfeited by mere lapse of time until the vendor has signified his intention to put an end to it. Until such election the vendee is liable for the purchase money, and entitled to specific performance on making payment: *Converse v. Blumrich*, 14 M. 109.

137. It seems that, even where time is made of the essence of a land contract, a short delay in fulfilment after the time fixed will not necessarily defeat the right to specific performance: *Voltz v. Grummett*, 49 M. 453.

138. Where a land contract provides for the payment of part of the consideration by conveying other described land within a year, or in lieu thereof \$800 with interest, the time limited is not so far of the essence of the contract that it may not be waived; and, if waived, the right to pay by conveying the land within a reasonable time is within the protection of a court of equity, though not renewed by a written agreement. And defendants, having expressly consented to delay in the performance of such a stipulation, and received money in consideration thereof, were held not warranted in resisting performance; which was tendered after a brief delay, and where there had been no change injurious to them: *Kimball v. Goodburn*, 32 M. 10.

139. Where one buys at a statutory foreclosure under an arrangement with the owner of the equity of redemption to give him further time to redeem or to purchase back, time is not so far of the essence of the contract as to prevent its enforcement upon equitable terms within a reasonable time after the lapse of the period specified: *Moot v. Scriven*, 33 M. 500.

140. A contract will not be enforced in favor of the purchaser where he has been in default on his own part, and has waited until there has been such a change in the value of the property sold as to render the contract unequal if made now: *Smith v. Lawrence*, 15 M. 499.

141. Where, owing to a proposed public action to be decided within a few days, a piece of land was in great demand, and its owner agreed to take a certain amount for it "if sold immediately," and the offer was not accepted until next day, the proposed purchaser sending his agent still later to obtain an abstract of the title for examination, at which time the owner, not understanding that any contract existed, declined to sell for the price named, but offered to do so for a specified advance if taken up at once, and the agent asserted no claim, but promised to inform his principal of

the increase demanded, and nothing more was heard from the latter for several days, in the course of which the owner had sold the land for a still greater sum, the court declined to decree specific performance of the agreement first above referred to, as for a contract, and dismissed the bill therefor, holding that the circumstances made time an essential element in the conduct of the parties: *Hawley v. Jelly*, 25 M. 94.

(c) *Laches*.

As to laches generally, see EQUITY, III.

142. As time destroys evidence, great delay in filing a bill for specific performance of a parol agreement to convey land necessitates a close scrutiny of the proofs even if the delay is excused: *Dragoo v. Dragoo*, 50 M. 573.

143. A bill for the specific performance of a parol agreement to convey land can hardly be maintained where it is not filed for twenty-five years after the alleged agreement was made, unless the complainant was unable to assert his claim before; and the neglect of near relations to aid a minor in the assertion of such claims is a circumstance entitled to consideration where there is no pretence that they were in collusion with the other party: *Ibid*.

144. A. contracted to buy pine lands, paying down a small part of the price. The land becoming unsalable, he did not pay the subsequent instalments. Six years afterward B. notified him that the contract had long been forfeited, and that he was only hesitating as to what he would do on his part. A. took no steps to enforce the sale until three years later, when the land had become valuable, although in the meantime B. had paid taxes on the land and sold it again. Held, that A. was not entitled to specific performance: *Smith v. Lawrence*, 15 M. 499.

145. Where a bill is brought against heirs of an estate for the specific performance of an oral contract made with their ancestor thirty years before, the delay must be excused by a very satisfactory showing of facts: *Ritson v. Dodge*, 83 M. 463.

146. One whose claims as purchaser have been distinctly denied by actual possession must move promptly in the assertion of any rights he claims thereafter: *Ibid*.

147. An alleged vendor's admissions of an agreement to convey, coupled with his asserted intention not to convey because of an act of waste committed by the vendee, are not very satisfactory evidence of the contract and such an announcement of his intention not to fulfil

the contract makes more culpable the vendee's long delay in bringing suit: *Ibid*.

148. A man bought a place, and put his sister and her family in possession of it. After he died her husband, who was one of the commissioners upon the estate, appraised the land as decedent's property, and the family took a long lease of it. Seven years later, when notice to quit was given for non-performance of its conditions, the sister filed a bill to compel her brother's son and heir to convey the land to her, alleging that her brother had promised her the land in the first place as an inducement to remain in the neighborhood; that it had always been his expressed intention to give her a deed of it, and that he had in fact had a deed prepared, which in his last illness he asked his wife to get, but which was not then or afterwards produced. *Held*, that upon the facts the bill would not lie: *Defer v. Lockwood*, 58 M. 117.

149. Where the owner permitted another person to occupy and improve lands for a number of years, under an oral contract of purchase, and under the impression that he might pay for it when demanded, and the purchaser offered to pay when notified to do so, it was *held* that there was no such laches imputable to the purchaser as should debar him from specific performance: *Ingersoll v. Horton*, 7 M. 405.

150. A notice served by the owner in such a case, requiring the purchaser to pay for the land in a specified time and take a deed therefor, estops him from taking advantage of laches of the purchaser prior to such notice: *Ibid*.

151. A party who has enjoyed the use of the estate, and of the moneys arising from sales which he had covenanted to share jointly with another, cannot object the lapse of time where the complainant filed his bill for specific performance thirteen years after his rights accrued — there being no fraud or unfairness imputed to complainant: *Hunt v. Thorn*, 2 M. 218.

152. A man promised to convey certain land to his daughter and her husband if the latter would give up other engagements and both would settle on the land and live there. *Held* that, when they had in good faith taken up their residence accordingly, they were entitled to the specific performance of this agreement; and that, so long as there was continued acquiescence in their claim to the land, there was no such laches as would bar their right to this belief: *Welch v. Whelpley*, 62 M. 15.

153. One who asks specific performance as soon as he is able to do so — *e. g.*, where he

awaits discharge in bankruptcy — is not guilty of laches: *Gamble v. Folsom*, 49 M. 141.

(d) *Preliminary conditions.*

154. The failure of the vendee to tender performance and demand a deed before filing his bill only affects the question of costs: *Morris v. Hoyt*, 11 M. 9.

155. Complainants notified the other party to the contract for the exchange of lands to meet them at the office where the contract was drawn and exchange deeds — that place having been agreed upon for the purpose at the time the contract was entered into. Complainants went to the office at the time specified, executed a deed of the lands to be conveyed by them, and left it there for delivery — the other party not having appeared. They afterwards notified him of what they had done. *Held*, equivalent to a tender of their deed, and a sufficient request for a deed from the other party. It is not necessary in such a case for the party claiming specific performance to prepare and tender a deed to be executed by the other party: *Daily v. Litchfield*, 10 M. 29.

156. One of the defendants held the land agreed to be conveyed by him under a contract of purchase. Instead of taking a deed to himself he had it made to his wife, who had notice of his agreement to convey to complainant, and paid no consideration. *Held*, that it was not necessary to demand a deed of the wife before filing a bill against both for specific performance: *Ibid*.

157. Where a demand for specific performance has once been made and refused, it is not necessary to repeat it under similar circumstances before suing to compel it: *Nims v. Vaughn*, 40 M. 356.

158. Specific performance of a land contract cannot be enforced by the seller unless he puts or offers to put the purchaser in possession: *McHugh v. Wells*, 89 M. 175.

159. A vendor seeking specific performance may be allowed relief if he is able to make a good title before final decree, though unable to do so when he files his bill: *Ligare v. Semple*, 32 M. 438, 460.

(e) *For and against whom granted.*

160. Courts of equity recognize and protect the rights of assignees, and enforce the performance of contracts in their favor: *Street v. Dow*, H. 427.

161. Third persons who have obtained contracts for a part of the land are still entitled,

when the original contract is surrendered to the vendor, to a specific performance so far as their lands are concerned: *Woodward v. Clark*, 15 M. 104.

162. For a case where the right to file a bill to enforce an agreement by the lessee of a mining location to convey an interest in the title when perfected, was upheld in favor of an assignee of the heir of the party with whom the agreement was made, see *Compo v. Jackson Iron Co.*, 49 M. 39.

163. A wife may have specific performance of her husband's contract to buy land if a homestead right has attached, and he seeks to relinquish the contract: *McKee v. Wilcox*, 11 M. 358.

164. Where the facts would preclude an original contracting party from claiming specific performance because it would operate as a fraud on the defendant, no person claiming through him can assert a better right without showing that he is a *bona fide* purchaser: *Berry v. Whitney*, 40 M. 65.

165. Where specific performance cannot be enforced against a person who has orally agreed to convey lands, the case will not be aided by showing that the land has been fraudulently granted to a third person: *Peckham v. Balch*, 49 M. 179.

166. Specific performance of an oral promise to convey land by way of gift will not be decreed as against a *bona fide* mortgagee of the premises: *Jones v. Tyler*, 6 M. 364.

167. Where an infant purchaser has assigned an agreement for the conveyance of land, specific performance will not be decreed in favor of the assignee, upon a bill filed within five months after the infant had reached his majority, without proof of some act by the infant affirming the agreement and assignment since his majority. Suit by the purchaser after reaching majority to enforce the agreement would have been an act of affirmation, but suit by the assignee would not; nor would the retention of the consideration for the assignment and his quiescence for five months after coming of age be alone sufficient to raise an inference of ratification: *Carrell v. Potter*, 23 M. 377.

168. A decree compelling a release by executors was sustained by a divided court where one of two joint owners acting with the other's oral authority had made a contract of sale the terms of which, after various transfers, had been fulfilled, but where the executors and legal representatives of the other joint owner, who had died meanwhile, claimed to retain their decedent's original interest: *Gardner v. Warren*, 52 M. 309.

169. Specific performance of a decedent's contract of support cannot be maintained against distributees of the estate after it has been closed: *Shannon v. Shannon*, 48 M. 182.

170. A father orally gave his son a tract of land and put him in possession, and the son made improvements on it and grew a crop of wheat. A person seeking to buy the land bargained with the son, whose rights he knew, but failing to agree with him closed a contract with the father, which it was agreed should be kept from the son's knowledge. The father afterwards refused to give a deed except subject to his son's claim for the wheat crop, and the purchaser filed a bill against him for specific performance. *Held*, that the bill was properly dismissed. The son was not a party, and could not be bound by a decree. Complainant knew the father could not sell such interests as the son owned, and having no equities could not ask a court of equity to create complications in the title, but should be left to seek a remedy at law: *Dowling v. Bergin*, 47 M. 183.

171. A parol agreement that has once been executed may be afterwards enforced in behalf of those for whose benefit it was meant: *Watrous v. Allen*, 57 M. 362.

Specific performance of covenant to indemnify bank is not enforceable against the state: See CONSTITUTIONS, § 420.

II. PLEADING AND PRACTICE.

(a) Parties.

172. Where the contract has been assigned in trust, the beneficiaries under it are not necessary parties to a bill by the vendor for its specific performance: *Hanchett v. McQueen*, 32 M. 22.

173. The heir at law of a deceased vendee, and not the administrator, is the proper complainant in a bill for specific performance by the vendor of a contract for the conveyance of lands: *House v. Dexter*, 9 M. 246.

174. To a bill for specific performance of a land contract, both the vendor and third persons to whom he has conveyed are necessary parties: *Daily v. Litchfield*, 10 M. 29.

175. Persons who, after a contract has been made for the conveyance of lands, acquire interests in the lands derived from the vendor are necessary parties to a bill for the specific performance of the contract: *Morris v. Hoyt*, 11 M. 9; *Chapman v. Morgan*, 55 M. 124.

176. A vendor who has assigned his interest need not be made a party if the vendee has accepted the assignee in his stead: *Lovejoy v. Potter*, 60 M. 95.

177. Where B. held a land contract given by A., and C. was entitled to a portion of the land when the contract was performed, and B. surrendered it up to A., whereupon C. filed his bill against A. for specific performance, so far as his portion was concerned, *held* that, as C. must claim under B., the latter was a necessary party to the suit: *Woodward v. Clark*, 15 M. 104.

178. Where a compromise contract is so drawn that what is to be done by one party is the consideration for that which is to be done by the other, specific performance of any portion of it cannot be had without bringing all the parties in interest before the court, so as to give opportunity for disposing of the whole controversy. And where that was not done the bill was dismissed, but without prejudice: *Baldwin v. Fletcher*, 48 M. 604.

179. Where the wife has not joined with her husband in a contract to convey his land, she is not a proper party to a bill by the purchaser for specific performance: *Richmond v. Robinson*, 12 M. 193.

180. A bill for specific performance should be dismissed if complainant parts with his interest: *Brewer v. Dodge*, 28 M. 359.

(b) *Pleadings.*

181. A bill for specific performance must set out a contract that is clear and definite: *Wright v. Wright*, 31 M. 380.

182. A bill for the specific performance of a contract made by an agent need not set forth the manner of its execution, or anything more than the fact of its execution; and the contract must then be proved as a valid one: *Hanchett v. McQueen*, 32 M. 22.

183. Where the rights of various defendants in a suit for specific performance must be settled among themselves before performance can be granted, the complainant can ask to have such rights disposed of in the same suit, and without a cross-bill or other analogous pleading: *Ibid.*

184. Bill for the specific performance of a contract to exchange certain lands of defendants for other lands of complainants. The bill alleged complainants to be owners in fee-simple of the lands to be exchanged by them. *Held*, a sufficient statement of what the title was: *Daily v. Litchfield*, 10 M. 29.

185. In a bill for the specific performance of a parol contract for the conveyance of land, the general facts relied upon, showing a part performance as a ground for taking the case out of the statute of frauds and for enforcing the agreement, must be specifically set forth:

Bomier v. Caldwell, 8 M. 468; *Peckham v. Balch*, 49 M. 179.

186. In a bill for the specific performance of a contract for the conveyance of land, a part of the consideration for which consisted in clearing and fencing, a general allegation that the same had been performed, was *held* sufficient: *Daily Litchfield*, 10 M. 29.

187. A bill for the specific performance of a parol agreement to convey land sufficiently avers payment to the defendant if it avers payment to a third person under the arrangement, and the proofs show that it was so made by defendant's direction and for his benefit: *Bigbee v. Bigbee*, 50 M. 467.

188. A failure of the vendee to pay taxes as stipulated in the contract stands upon the same basis, as respects specific performance, as a default in the payment of instalments of the purchase money; and his offer in his bill of full payment and performance covers the taxes as well as the purchase money: *Morris v. Hoyt*, 11 M. 9.

189. Where a wife's bill for specific performance of a contract to convey lands to her impleads a third person, to whom the principal defendant has conveyed, and avers that complainant is in possession, and indirectly that such third person knew her equities, it is not demurrable generally for failure to allege that he was not a *bona fide* purchaser: *Farwell v. Johnston*, 34 M. 342.

190. A bill which prays for specific performance as the primary remedy, and for compensation as alternative relief merely, is not subject to the objection that it is filed for compensation only: *Ibid.*

191. A bill to establish a right of way and to enjoin encroachments upon it cannot be sustained where it does not furnish the means for declaring exactly what the right is and the precise locality which it occupies, with the shape and dimensions thereof, and where the proofs show nothing but an oral agreement for its establishment, and such occasional variations in the bounds of the locality as to make it impossible to determine where it originally existed: *Fox v. Pierce*, 50 M. 500.

As to description of premises, see *EQUITY*, § 823.

192. A bill to compel payment of the purchase price on a contract of sale is in the nature of a foreclosure bill, and not demurrable as praying a forfeiture, since the court has power to protect all equities when the rights under the contract are determined, and to order a sale, if necessary, for the satisfaction of moneys due: *Day v. Cole*, 56 M. 294.

193. A bill to obtain payment for land

contracted to be sold is not demurrable generally on the ground that complainant does not own the title to all the lands, but that part of it is in one of the defendants; if all parties are in court it is enough, and a demurrer admits them to be if so alleged: *Ibid.*

194. The objection that a bill for specific performance fails to aver the value of the lands as exceeding \$100 is not sustained where it shows that complainants paid more than that sum: *Raymond v. Shawboose*, 34 M. 142.

195. Where evidence had been taken in the case showing valuable improvements made by complainant on the land in controversy, but there was no allegation in the bill with respect to such improvements, *held*, that such evidence could not be considered in the decision of the case: *Bomier v. Caldwell*, 8 M. 463.

196. If the vendee denies that the title is good, or insists upon encumbrances as an objection to performance, he should put the title or incumbrances in issue by his pleadings: *Daily v. Litchfield*, 10 M. 29.

(c) Decree.

When bill retained for other relief where specific performance is denied, see EQUITY, §§ 98-100.

197. Every decree for the specific performance of an oral contract involving a continuous right necessarily involves the execution of such a document or voucher as will secure it, and specific time fixed within which a release should be made: *Nichols v. Marsh*, 62 M. 439.

198. A decree for specific performance of an accepted offer to sell lands should not require the vendor to warrant against tax claims or tax deeds: *Wilcox v. Cline*, 70 M. 517 (June 8, '88).

199. In a suit for the specific performance of a contract for the purchase of the north half of a certain lot bounded on the west by a meandering stream which runs so that the north line of the lot is longer than the south line, if the evidence leaves the dividing line between the halves doubtful the lot will be so divided by an east and west line as to make the two parts equal in quantity; under a bill demanding the north half of the lot, an equal division of the river front is erroneous: *Au Grés Boom Co. v. Whitney*, 26 M. 42.

200. When specific performance is decreed in favor of one who is still owing something on the contract, he should be ordered to bring the amount into court for the party entitled to it: *Stevenson v. Jackson*, 40 M. 702.

201. In granting specific performance upon a bill filed by a wife where a homestead right had attached in land held by her husband under a contract of purchase, which contract he had relinquished without her consent, the decree should require conveyance to the husband, subject to a lien in the wife's favor for the amount paid by her in fulfilling the contract: *McKee v. Wilcox*, 11 M. 358.

202. Where the decree upon a bill for specific performance of a contract to sell land made the purchase money a lien upon the land in defendant's favor, and ordered complainant to assume certain unascertained debts owing jointly by her and by defendant, *held*, that such debts should be ascertained and excluded in the purchase money due defendant: *Johnson v. Fowler*, 68 M. 1.

203. Where one bought at a statutory foreclosure sale under an arrangement with the owner of the equity of redemption to give him further time to redeem or to purchase back, and where the arrangement was to pay twelve and one-half per cent. interest to cover original expenses and trouble, and the extra two and one-half per cent. did not exceed \$30, payment in accordance with this arrangement was imposed as terms of granting the relief sought: *Moote v. Scriven*, 33 M. 500.

Further as to interest in decreeing specific performance, see INTEREST, §§ 27, 63, 68.

204. A defendant who has been ordered to execute, etc., a deed with special covenant is not bound to prepare it, and cannot be held as for contempt in disobeying the decree until the deed is presented to him and he has refused to execute it: *Berry v. Innes*, 35 M. 189.

As to relation back of decree, see EQUITY, § 1340.

Ex parte alteration of decree, see EQUITY, §§ 1382, 1383.

That costs are discretionary, see COSTS, § 168.

No costs against defendant who disclaims, see COSTS, § 183.

STAMPS.

1. The provisions of the act of congress which precluded unstamped instruments being received in evidence had no application to state courts: *Clemens v. Conrad*, 19 M. 170.

2. And in those courts the want of a stamp does not affect the force of a document as evidence: *Sammons v. Holloway*, 21 M. 162.

3. The stamp act cannot be applied to the process of state courts. Congress has no power to levy taxes on such process: *Fifield v. Close*, 15 M. 505.

4. A stamp is not essential to the validity of a promissory note, and the want of a stamp does not put an indorsee upon inquiry: *Burson v. Huntington*, 21 M. 415.

5. A person being the holder of a draft drawn in August, 1863, made a gift of it *causa mortis* to her mother; and after her death her administrator, treating the draft as void for want of a sufficient stamp, brought suit against the drawer upon the original consideration. The drawer, defending in the interest of the donee, produced the draft on the trial and placed the requisite stamp upon it, in pursuance of the act of congress of June 30, 1864. It was held that the draft was thereby made valid from its inception, rendering the gift valid, and defeating the plaintiff's right of recovery: *Gibson v. Hibbard*, 13 M. 214.

6. An instrument not stamped at the time of execution was stamped afterwards by the collector of internal revenue, who appended a certificate as required by the act of congress of 1866. Held, that the instrument was properly stamped, and no inquiry could be gone into of the propriety of the collector's action: *Peoria Ins. Co. v. Perkins*, 16 M. 380.

7. Where an assignment of a policy of insurance is properly stamped as such, the fact that it purports to authorize the assignee to collect the insurance money in case of loss does not make it necessary to stamp it as a power of attorney also: *Ibid.*

8. Where a case appealed from a justice had been dismissed in the circuit court because the appeal papers had not been stamped the dismissal was reversed, as the appeal was taken before any act of congress requiring such stamping: *Fowler v. Kellum*, 14 M. 300.

9. Where the grantee in a deed seeks to recover in ejectment under it, it is competent for defendant, although no party to the deed, to show that a third person caused it to be made to the grantee without consideration; as, in such case, the stamps required would depend upon the value of the land: *Groesbeck v. Seeley*, 13 M. 329.

10. A stamp upon a mortgage given while the laws requiring securities to be stamped in proportion to their amount were in force raises a strong presumption that the mortgage was not understood to be operative as a security beyond the amount covered by the stamp: *Lashbrooks v. Hatheway*, 52 M. 124.

STARE DECISIS.

See COURTS, §§ 248-251; TREATIES, § 5.

Res judicata, see JUDGMENTS, II, (d); EQUITY, XII, (c).

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STATE.

That the state of Michigan came into existence when constitution was ratified and state government was organized, see CONSTITUTIONS, §§ 417, 418. And see COURTS, § 156.

As to state's relations with the Michigan State Bank, see BANKS, §§ 82-86; CONSTITUTIONS, §§ 174, 420-423; CONVEYANCES, §§ 211, 216-218.

That state did not become responsible for debts of government stock bank, see BANKS, § 87.

1. The state may sue: *Michigan State Bank v. Hastings*, W. 9.

2. And when it sues it is limited in its recovery by any defences that might be set up against individuals: *Ambler v. Auditor-General*, 38 M. 746.

3. When the state brings suit, it no less than other prosecutors must appear on the face of the record to be entitled to prosecute or the proceeding must fail because of plaintiff's irrelatation to the subject of the action: *Attorney-General v. Soule*, 28 M. 153.

4. The claim of a coroner under H. S. §§ 9593-9597, for fees and expenses incident to an inquest upon the view of the dead body of a stranger, is against the state, which cannot be sued for it; and it is only after an order of allowance has been made by the circuit court (which order may be compelled in a proper case, see MANDAMUS, § 110) that the state treasurer is permitted to pay the claim: *Locke v. Speed*, 62 M. 408.

That the state cannot be sued against its consent, see CONSTITUTIONS, §§ 419, 420; EQUITY, § 701; PUBLIC LANDS, § 191.

5. The state can be recognized by the courts as a suitor in legal proceedings only through the agents or legal representatives appointed by law, and the appearance of the proper representative can only be attested by the record: *People v. Navarre*, 22 M. 1.

6. In the absence of statute no action can be brought on behalf of the public except by the proper public agent: *Benalleck v. People*, 31 M. 200.

And further as to suits and proceedings in behalf of state, see ATTORNEY-GENERAL, QUO WARRANTO.

Costs against state, see COSTS, §§ 267-271, 239.

7. The state loses nothing by laches, even as against one of its municipal subdivisions: *Attorney-General v. St. Clair Supervisors*, 30 M. 388.

As to estoppels against the state, see ESTOPPEL, §§ 222, 223, 313-315; TOWNSHIPS, §§ 15, 17.

As to when and for what purposes *mandamus* issues to state boards and officers, see *MANDAMUS*, §§ 124-154.

That official discretion of executive department of state government is not reviewable, see *CERTIORARI*, § 83; *MANDAMUS*, §§ 124-128, 133-135, 137.

8. If the auditor-general issues a warrant excessive in amount, a new one should be taken out; the state treasurer cannot pay the proper amount on the original: *Houghton v. State Treasurer*, 40 M. 320.

9. In advertising for bids for printing and publishing the state reports, it is not lawful to impose the condition that the work shall be done at the capital: *Ayres v. State Board of Auditors*, 42 M. 422.

10. The published notice for bids for printing and publishing the supreme court reports should inform bidders at what time the bids will be opened, so that the latter may be present and see that the contract is awarded to the lowest bidder as the law provides: *Ibid.*

11. A public contract not made as the constitution requires is not protected by the constitution from alteration: *Ibid.*

12. In receiving proposals for public printing, the board of state auditors is required by law to take from each bidder a bond with sureties conditioned that if the contract is awarded to him he will enter into it or pay damages. Such a bond should be approved before the biddings, and it is improper for the board to leave it for consideration afterwards. But the board having left the bonds without examination until after opening the bids, and the bond of the lowest bidder being defective, *held*, that it was not the right of other bidders to insist that the board should not suffer the successful competitor to perfect his bond at that time: *Detroit Free Press Co. v. State Board of Auditors*, 47 M. 135.

13. Where the law requires the public printing to be let to the lowest bidder, an advertisement inviting proposals for doing fifty or more kinds of work at rates to be specified for each, but all the proposals of a bidder to be taken together as a single bid, and which gives no basis on which it is to be determined which bid in the aggregate is the lowest, does not accomplish the purpose of the law, and therefore is not in compliance with it: *Ibid.*

14. Where different kinds of public work have no necessary connection with each other, *quære* whether bids therefor should not be entirely separate. But the board of auditors has undoubtedly considerable discretionary authority in determining how bids for state printing shall be invited; and as there are some

conveniences in having all the work done by the same person, it cannot be said, as matter of law, that they have no right to combine the proposals: *Ibid.*

Further as to state and state officers, see these headings in the INDEX.

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V. REVIVOR.

As to validity, see *CONSTITUTIONS*.

As to the enactment of statutes, see *CONSTITUTIONS*, §§ 493-622.

As to proof of foreign statutes and presumptions regarding them, see *EVIDENCE*, §§ 1061-1083.

As to pleading statutes, see *PLEADINGS*, §§ 261-276.

I. IN GENERAL.

- (a) *What are; what forms part of.*

1. The enactments of the legislature are the only instruments that, under the constitution, can properly be called laws; a city charter is a state law, and confers statutory authority: *Fennell v. Bay City*, 36 M. 186.

2. Publication with the statutes does not give the effect of law to a bill which, though signed by the governor, was not constitution-

ally passed by the legislature: *Attorney-General v. Joy*, 55 M. 94.

3. A claim that a clause in a bill as drafted was in fact left out by amendment and was inadvertently retained in the statute as passed cannot be accepted where the legislative journals do not conclusively make out the fact: *Smith v. Eaton Supervisors*, 56 M. 217.

4. Where there is a discrepancy between an original law on file and the printed copy thereof the former will govern: *Hulburt v. Merriam*, 8 M. 144.

5. So held where two codifications made by legislative authority had followed the printed copy: *Ibid.* (*Contra, Pease v. Peck*, 18 How. 595.)

6. H. S. § 1696 permits petitions for laying out drains to be presented to any drain commissioner by any five or more freeholders "residing in [any one or more] townships in which such drains [drain] or the lands to be drained thereby may be [situated]." Held, that the bracketed words, which were not in the law as approved by the governor, have no proper place in the statute, and cannot be construed as authority to a township drain commissioner to act outside of his township: *Drain Commissioner v. Baxter*, 57 M. 127.

(b) When inoperative.

As to validity generally, see CONSTITUTIONS.

7. A statute is not enforceable unless it furnishes adequate means to secure the purposes for which it was enacted: *Attorney-General v. Lawton*, 80 M. 386; *Underwood v. People*, 82 M. 1; *Lloyd v. Wayne Circuit Judge*, 56 M. 286; *Hauck's Case*, 70 M. 396.

8. A statute which authorizes a city to open and widen streets according to the procedure therein prescribed, but which prescribes no procedure for widening is, so far, inoperative: *Chaffee's Appeal*, 56 M. 244.

9. A clause in a city charter remains inoperative to change the general law where the charter makes no provision for carrying it out, and where the common law cannot supply the omission: *People v. Smith*, 9 M. 193.

10. A statute whereby parties' rights are conclusively determined after a specified period is inoperative where the only remedy provided for testing such rights within that period is void: *Quinlon v. Rogers*, 12 M. 168.

11. A section of a statute becomes inoperative where it is a part of and dependent on a new and unconstitutional system created by the statute: *Rice v. Auditor-General*, 30 M. 12.

As to effect of partial invalidity of statute, see, further, CONSTITUTIONS, §§ 676-689.

(c) Time of taking effect.

12. A statute need not be published before taking effect unless the constitution or statutes provide otherwise: *Stevenson v. Bay City*, 28 M. 44.

13. A statute not ordered to take effect at another time does not become of force until ninety days after the final adjournment of the legislature: *Fosdick v. Van Huse*, 21 M. 567; *Wohlscheid v. Bergrath*, 46 M. 46.

14. A law passed Feb. 4, 1859, providing for an election "at the annual township election to be held in April next." The law, under the constitution, did not take effect until May 16, 1859. Held, by two of the justices, that to give the law any force it must be held to apply to the next annual election after the date last mentioned: *Rice v. Ruddiman*, 10 M. 125; *Carleton v. People*, 10 M. 250.

15. A statute passed to take effect at a future day is to be understood as speaking from the time it goes into operation, and not from the time of its passage. The intervening period is allowed to enable the public to become acquainted with its provisions; but until it becomes operative as a law, they cannot be compelled to govern their actions by it: *Price v. Hopkin*, 18 M. 318.

16. The revision of the statutes passed in 1846, but which did not go into effect until March 1, 1847, had no force until the latter date; and its provisions could not affect rights acquired under a mortgage executed in January, 1847: *Cargill v. Power*, 1 M. 369.

(d) Notice and knowledge.

As to judicial notice of statutes, see EVIDENCE, §§ 972-984.

17. All persons are bound to take notice of a public statute: *Le Roy v. East Saginaw R. Co.*, 18 M. 293.

18. All persons must take notice of a statute that enlarges a city; so that the illegality of a tax based on an invalid enlargement would be a defect apparent to all, and title would not be clouded: *Curtis v. East Saginaw*, 35 M. 508.

19. One whose property is assessed under an unconstitutional law must be presumed to know that the law is void and that a sale for the tax does not cloud his title: *Detroit v. Martin*, 34 M. 170.

As to effect of ignorance of unconstitutionality, see CONSTITUTIONS, § 690.

20. A statute is not operative as notice from its passage but from its taking effect: *Cargill v. Power*, 1 M. 369; *Price v. Hopkin*, 13 M. 318.

21. All who assume to contract with a public officer letting work are bound to take notice of the statutory regulations: *Mackenzie v. Baraga*, 39 M. 554.

As to the general presumption of knowledge of the law, see EVIDENCE, §§ 1527-1537.

II. CONSTRUCTION.

(a) *In general; legislative intent.*

As to particular terms, see WORDS AND PHRASES.

22. It is implied in all statutes that they shall be read in accordance with the regular rules of interpretation, and apply to such persons or things as fall naturally within their scope: *Crane v. Reeder*, 21 M. 24, 66.

23. The object of construction is to ascertain and carry into effect the intention of the legislature: *People v. Oakland County Bank*, 1 D. 282; *Malonny v. Mahar*, 1 M. 26; *Niles v. Rhodes*, 7 M. 374; *Whipple v. Saginaw Circuit Judge*, 26 M. 342; *Peninsular R. Co. v. Duncan*, 28 M. 130; *Albany & B. Mining Co. v. Auditor-General*, 37 M. 391.

24. And that intent, when manifest, must not be defeated by construction: *Parsons v. Wayne Circuit Judge*, 37 M. 287.

25. The legislative purpose appearing it is not to be defeated by technical constructions: *French v. Lansing*, 30 M. 378.

26. But must be carried into effect by the courts if practicable: *Brooks v. Hill*, 1 M. 118.

27. The courts will give a statute such a construction as will carry out the intention of the legislature, where that intent is obvious and practicable: *People v. Plumsted*, 2 M. 465.

28. A construction that will result in great inconvenience is to be avoided unless the meaning of the legislature is plain, in which case it must be obeyed: *Wales v. Lyon*, 2 M. 276.

29. Where the provisions of a statute do not leave its construction doubtful, an argument based on the inconvenience attending such construction can have no weight: *Folkerts v. Power*, 42 M. 283.

30. Where the legislature possesses full power over a subject the question of the effect of what it has assumed to do must be a question of intent and construction: *Detroit Street R. Co. v. Guthard*, 51 M. 180.

31. Courts cannot pass upon the wisdom, policy or equity of valid statutes: *Crane v. Reeder*, 23 M. 323; *Reithmiller v. People*, 44 M. 280; *Sheley v. Detroit*, 45 M. 431.

32. The legislature will choose its own methods in collecting information to guide its legislative discretion, and the courts must assume that they are suitable and proper and lead to proper results. The legislature is not to be supposed to have acted improperly, unadvisedly or from any other than public motives under any circumstances, when acting within the limits of its authority: *Flint & F. P. R. Co. v. Woodhull*, 25 M. 99.

33. The intent to be sought for in a statute is that of the particular legislature which passed it: *Dewar v. People*, 40 M. 401.

34. The intent of the legislature in passing a law is to be sought in the law itself: *Brooks v. Hill*, 1 M. 118.

35. The construction to be put upon a statute must be such as is warranted by or at least not repugnant to the words of the act: *Green v. Graves*, 1 D. 351; *Leoni v. Taylor*, 20 M. 148.

36. The intent of the legislature must be gathered from the language used to express it; and where the language is clear and explicit and susceptible of but one meaning, and there is nothing incongruous in the act, the court is bound to suppose the legislature intended what the language imports: *Barstow v. Smith*, W. 394; *Leoni v. Taylor*, 20 M. 148; *Swartwout v. Michigan Air Line R. Co.*, 24 M. 389; *Whipple v. Saginaw Circuit Judge*, 26 M. 342; *Wilt v. Cutler*, 38 M. 189.

37. It is only where a statute is ambiguous in its terms that courts exercise the power of so controlling its language as to give effect to what they may suppose to be the intention of the legislature: *Bidwell v. Whitaker*, 1 M. 469.

38. Where the object of the legislature is plain and unequivocal, courts ought to adopt such a construction as will best effectuate the intention of the lawgiver: *Green v. Graves*, 1 D. 351.

39. But the courts are not at liberty, in order to effectuate what they may suppose to have been the intention of the legislature, to put upon the statute a construction not supported by the words, though the consequences should be to defeat the purposes of the act: *Ibid.*; *Leoni v. Taylor*, 20 M. 148.

40. A statute cannot be extended by construction beyond the obvious import of its language: *Morrill v. Seymour*, 3 M. 64; *Meister v. People*, 31 M. 99.

41. Where the language of a statute is clear and explicit, no other than a literal construction should be given to it: *People v. Plumsted*, 2 M. 465.

42. Where the provisions of a section of a statute are clear and unambiguous, the literal

sense must prevail, unless it is obvious from a survey of the whole act that by such a construction the intention of the legislature would be defeated: *Watkins v. Atkinson*, 2 M. 151.

43. The real intention of the legislature, when accurately ascertained, prevails over the literal sense of terms, especially when a strict adherence to the letter would lead to palpable injustice, contradiction or absurdity: *Green v. Graves*, 1 D. 351.

44. The sense of a term used in a statute is to be determined from the context and the apparent object of the provision, as indicated by the nature of the case and other statutes *in pari materia*: *People v. McKinney*, 10 M. 54.

45. A statute must be construed with reference not only to its language, but its object, as gathered from its various parts and other statutes *in pari materia*: *Washburn v. People*, 10 M. 373.

46. The abstract meaning of particular words or their strict grammatical construction will not alone govern; but they must be applied to the subject-matter and general scope and purport of the whole act, and be considered with some reference to the evil sought to be remedied, and in the light of other statutes *in pari materia*, as well as the principles of the common law: *Whipple v. Saginaw Circuit Judge*, 26 M. 342.

47. The occasion and the reason of the enactment; the letter of the act, whether words be used in their proper or in a technical sense; the context, the spirit of the act, and whether in its nature remedial or penal, are all to be considered: *Attorney-General v. Bank of Michigan*, H. 315.

48. Where the words of a statute are not explicit the intent is to be learned by considering the occasion and necessity of the law — the mischief felt and the remedy in view: *Green v. Graves*, 1 D. 351; *People v. Plumsted*, 2 M. 465; *Sibley v. Smith*, 2 M. 486.

49. The cause or reason of the act may either be collected from the statute itself or discovered from extrinsic circumstances: *Green v. Graves*, 1 D. 351.

50. A construction required by a strict and literal interpretation should not be adopted where the legislative intent would be perverted if the language used were tested by nice rules of art: *Peninsular R. Co. v. Duncan*, 28 M. 130.

51. If the intent of the legislature is intelligibly expressed the courts will carry it out, and will not allow it to be defeated by verbal criticism: *Chippewa Supervisors v. Auditor-General*, 65 M. 408.

52. Where one part of an act is equivocal, other portions may be resorted to as guides: *Attorney-General v. Bank of Michigan*, H. 315.

53. The legislative intent is to be gathered not from a particular expression or provision, but from a view of the whole statute and by comparing one portion with another: *Attorney-General v. Bank of Michigan*, H. 315; *Joy v. Thompson*, 1 D. 378; *Bronson v. Newberry*, 2 D. 88; *Wales v. Lyon*, 2 M. 276; *People v. Plumsted*, 2 M. 465; *Sibley v. Smith*, 2 M. 486; *Seymour v. Peters*, 67 M. 415 (Oct. 27, '87).

54. Provisions of a city charter in regard to refunding illegal taxes must be taken together with those relating to re-assessments: *Louden v. East Saginaw*, 41 M. 18.

55. The inferences to be drawn from a literal interpretation of one section of a statute must be controlled by clear and express language found in other sections, although the policy of the act may to some extent be defeated: *Bidwell v. Whitaker*, 1 M. 469.

56. The application of particular provisions is not to be extended beyond the general scope and object of the statute, unless such extension was obviously designed: *Ticknor's Estate*, 13 M. 44.

57. A statute is to be so construed as to give, if possible, full effect to all its provisions: *Malonny v. Mahar*, 1 M. 26; *Swartwout v. Michigan Air Line R. Co.*, 24 M. 389.

58. Statutes should be so construed as to produce the least conflict, and so as to harmonize as far as possible all their provisions: *Galpin v. Abbott*, 6 M. 17, 41.

59. Effect is to be given, if possible, to every clause and sentence; and it is the duty of courts, so far as practicable, to reconcile the different provisions of a statute so as to make the whole of it consistent and harmonious; and where this is impossible to give effect to the manifest intent of the legislature: *Attorney-General v. Detroit & E. P. R. Co.*, 2 M. 188; *People v. Burns*, 5 M. 114.

60. In order to give effect to a statute, courts will sometimes transpose sentences so as to place them in their just connection with the sentences to which they relate: *Detroit v. Chaffee*, 70 M. 80.

61. A construction rendering any part of a statute nugatory should not be adopted if any reasonable construction can be put upon it which would give effect to the whole: *Smith v. Jones*, 15 M. 281.

62. Where a statute admits of any other rational construction it is not to be supposed that any section was inserted with no intelli-

gible purpose: *People v. Ingham Supervisors*, 20 M. 95.

63. A construction which would render useless a proceeding for which the statute provides, should not be adopted, as it would impute folly to the legislature: *Peninsular R. Co. v. Duncan*, 28 M. 180.

64. Every word in a statute must be presumed, where possible, to have some force and meaning, and to have been made use of for some purpose: *Potter v. Safford*, 50 M. 46.

65. In case of an apparent conflict between different subdivisions of the same section of the statute the entire section must be examined, and such a construction put upon it as, if possible, will harmonize and give effect to the various provisions according to the evident intent, so far as the same may be gathered from the language used: *Burke v. Burke*, 84 M. 451.

66. A term used in a statute may be given an enlarged or restricted meaning as the intention of the legislature will best be carried into effect: *Carne v. Litchfield*, 2 M. 340.

67. General words may be restrained or enlarged so as to effectuate the intention of the law-maker: *Welch v. Stowell*, 2 D. 332.

68. General words in a statute must receive a general construction; and if there be no express exception the court can create none: *Ten Eyck v. Wing*, 1 M. 40.

69. Special terms used in a statute do not enlarge but limit the force of the general words used: *Detroit v. Putnam*, 45 M. 263.

70. Where no intention to the contrary appears, general words used after specific terms are to be confined to things, purposes or persons *ejusdem generis* with those previously enumerated: *American Transp. Co. v. Moore*, 5 M. 368, 24 How. (U. S.) 1; *McDade v. People*, 29 M. 50; *Board of Education v. Detroit*, 30 M. 505; *Brooks v. Cook*, 44 M. 617.

71. Said rule is especially applicable in the interpretation of statutes defining crimes and regulating their punishment: *McDade v. People*, 29 M. 50.

72. But said rule does not apply where the statute does not attempt an enumeration in particular terms, but where all the terms used are alike general; so held of H. S. § 9161, as to false pretences, etc. (see CRIMES, § 363): *Higler v. People*, 44 M. 290.

73. The rule *expressio unius est exclusio alterius* is by no means universal, and requires great caution in its application; and where, without it, the legislative intent as gathered from the whole statute is clear, it does not apply: *Niles v. Rhodes*, 7 M. 874, 886.

74. Where a statute explicitly adopts, in reference to the acknowledgment or proof of

deeds, the law of the place where acknowledged or proved, it is presumable that if it intended to adopt the law of the place of execution that intention would also have been expressed: *Galpin v. Abbott*, 6 M. 17.

75. Where a statute made special provision for the compensation of certain officers, the omission to provide compensation to other officers therein named was held to have been intentional, and to preclude them from pay: *Perry v. Cheboygan*, 55 M. 250.

76. The words of a statute are to be taken in their ordinary signification and import: *Green v. Graves*, 1 D. 351.

77. Phrases in a statute are not to be given a sense different from common and approved usage: *Leoni v. Taylor*, 20 M. 148.

78. The natural import of the words of any statute, according to the common use of them when applied to the subject-matter of the act, is to be taken as expressing the intention of the legislature, unless the intention so resulting from the ordinary import of the words be repugnant to sound acknowledged public policy: *People v. May*, 8 M. 593.

79. The words of a statute must receive a construction consistent with the ordinary import of the words employed, unless a different one is obviously contemplated: *People v. Auditor-General*, 7 M. 84.

80. In all cases where a common-law definition is employed, it must be presumed that it is employed in the common-law sense, unless there is distinct and satisfactory evidence to the contrary: *Pitcher v. People*, 16 M. 143.

81. If the subject of the statute relates to technical matters, the words used are to be construed technically, unless from the statute itself it appears that the terms are used in a more popular sense: *People v. May*, 8 M. 598.

82. Words which have acquired a well-defined technical meaning are to be understood in their technical sense, especially when employed by way of definition: *Pitcher v. People*, 16 M. 142.

83. Punctuation alone is an unsafe guide in construing a statute: *Campau v. Dewey*, 9 M. 381.

(b) *Of revisions and compilations.*

84. It is a general rule that where a statute is amended, either by the addition or omission of words or sentences, the law-maker must be presumed to have had some object in view—to have intended to effect some change—and that courts in construing such amended laws should seek for that intent, and not render void by construction parts added or revive

parts omitted; but it is doubtful whether, in the construction of revised or entire new drafts of statute laws, any such rule should be applied: *Strong v. Daniels*, 3 M. 466.

85. The whole body of laws designated as the "Revised Statutes" (of 1846) was passed as one act and must be construed together as such: *Perry v. Hepburne*, 4 M. 165.

86. The Revised Statutes constitute but one act and all provisions must stand together: *People v. Mayworm*, 5 M. 146; *Brayton v. Merithew*, 56 M. 166.

87. In interpreting a provision of the Revised Statutes all such parts as relate to the same subject are to be taken into view: *Malonny v. Mahar*, 1 M. 26.

88. Different chapters of the Revised Statutes form parts of one entire code passed at the same session of the legislature, and must be construed together as one act: *Shannon v. People*, 5 M. 36, 50.

89. The Revised Statutes constitute in law but one statute, so that different chapters modify each other: *Bewick v. Alpena Harbor Co.*, 89 M. 700.

90. The compiled laws have not the force of a revision; that is prohibited by the constitution: *Ibid.*; *Stewart v. Riopelle*, 48 M. 177.

91. The compiled laws are not a re-enactment or an original enactment of the provisions therein contained; they have no force except as a compilation of existing statutes, properly arranged but not altered: *Stewart v. Riopelle*, 48 M. 177.

(c) *With reference to the title.*

For constitutional requirements as to title, see CONSTITUTIONS, §§ 541-609, 621. And see REGISTERS OF DEEDS, § 5.

92. As the title of an act must express its purpose, the act may be construed in the light of its title if they are not incompatible: *Reithmiller v. People*, 44 M. 280.

93. A statute is to be construed in view of its title and its lawful purposes, assuming as far as possible that broad language should be confined to lawful objects: *Allor v. Wayne Auditors*, 43 M. 76.

94. A repealing act is to be read in the light of its title: *People v. Hobson*, 48 M. 27.

95. In case of doubt the title of a statute may be resorted to in aid of its interpretation, and may afford a conclusive solution: *Smith v. Auditor-General*, 20 M. 898.

96. Under our constitution the title of an act is significant and usually controlling in determining its scope: *McKellar v. Detroit*, 57 M. 153.

97. The operation of a statute must be restricted to the object expressed in the title: *Baptist Missionary Union v. Peck*, 10 M. 341; *Ryerson v. Ulley*, 16 M. 269; *Bates v. Nelson*, 49 M. 459.

98. Though the terms of a statute are general, they are restricted by a title which is specific in its reference to a particular class: *Booth v. Eddy*, 83 M. 245.

99. A statute is to be so construed as to confine its operation to the purview of its title: *Bissell v. Wayne Probate Judge*, 58 M. 237. That a prospective title precludes retrospective effect, see *infra*, § 249.

100. Nor can the operation be made more extensive by so defining the title in the body of the act as to make it cover more than the natural and proper meaning of the words will warrant: *Northwestern Manuf. Co. v. Wayne Circuit Judge*, 58 M. 381.

101. The constitution does not, however, require that a statute shall have no operation further than its title absolutely expresses: *People v. Wands*, 23 M. 385.

(d) *With reference to common law.*

102. Statutes are to be construed with reference to the common law, and it is never to be presumed that the legislature intended to make any innovation upon the common law further than was necessary to carry the act into effect: *Wales v. Lyon*, 2 M. 276; *Shannon v. People*, 5 M. 71; *Crane v. Reeder*, 22 M. 322; *Whipple v. Saginaw Circuit Judge*, 26 M. 342.

103. If the apparent meaning of the statute is opposed to well-settled and fundamental principles of the common law, such meaning should be restrained or enlarged accordingly: *Wales v. Lyon*, 2 M. 276.

104. But the manifest intent of the legislature is not to be resisted because the statute is in derogation of the common law: *Sibley v. Smith*, 2 M. 436.

105. And common-law rules cannot override statutes: *Rogers v. Port Huron & L. M. R. Co.*, 45 M. 460.

That statutes in derogation of the common law are construed strictly, see *infra*, §§ 181-186.

(e) *With reference to the constitution.*

106. A construction, if practicable, is to be put upon a statute which will be in harmony with the constitution, and not one which would render the statute ineffectual: *Tabor v. Cook*, 15 M. 322.

107. Where two different constructions of a statute are possible, one of which is consist-

ent with the constitution, while the other is inconsistent, the former is to be preferred as the one presumptively intended by the legislature: *Motz v. Detroit*, 18 M. 495; *Grand Rapids Booming Co. v. Jarvis*, 30 M. 306.

108. The legislature will be presumed to have intended the language of a statute to be used in a constitutional sense: *Grand Rapids Booming Co. v. Jarvis*, 30 M. 308.

109. Courts are bound, whenever possible, so to construe statutes as to give them validity and a reasonable operation: *Van Fleet v. Van Fleet*, 49 M. 610.

110. No unlawful intent will be inferred except where it is too plain to be mistaken: *Allor v. Wayne Auditors*, 48 M. 76.

111. A statute repealing a general law authorizing the formation of corporations is to be construed so as to make it valid rather than invalid: *Bewick v. Alpena Harbor Co.*, 39 M. 700.

As to passing on constitutionality of statute, see CONSTITUTIONS, VI, (d), 2.

112. Charters and local laws and regulations must be construed in conformity with constitutional principles and in harmony with the general laws of the land: *Frazee's Case*, 63 M. 396.

113. The meaning of a statute is not enlarged by a subsequent change in the constitution: *Dewar v. People*, 40 M. 401.

114. And where a meaning claimed for a statute could not have existed when the act was passed, being forbidden by the constitution, a change in the constitution does not effectuate such meaning: *Mount Pleasant v. Vansice*, 43 M. 361.

115. An unconstitutional statute is not validated by amending the constitution so as to confer the powers which the statute sought to give: *Dullam v. Willson*, 53 M. 392.

116. Void legislation is to be regarded as absolutely void until the legislature, after obtaining authority, re-enacts it: *Fenn v. Kinsey*, 45 M. 446.

(f) *With reference to other statutes.*

117. The prior law on the subject is to be considered in arriving at the true construction of a later statute: *Tabor v. Cook*, 15 M. 322.

118. A new law cannot be controlled by an old one unless such an intent is clearly expressed: *Chapoton v. Detroit*, 38 M. 636.

119. Where there are two acts or provisions, one of which is special and particular and certainly includes the matter in question, and the other is general, and would, if standing alone, include the same matter, and thus

conflict with the special act or provision, the special act must be taken as intended to constitute an exception to the general, especially when such conflicting provisions are contemporaneous in their passage: *Crane v. Reeder*, 22 M. 322.

120. A specially-directed and more recent statutory provision must be taken as an exception to an earlier general one: *Dewey v. Central Car & Manuf. Co.*, 42 M. 399.

121. Village charters are not to be construed as designed to encroach upon the general law further than the plain terms show an intent to do so: *Merrill v. Kalamazoo*, 35 M. 211.

122. Statutes *in pari materia* are to be taken together in ascertaining the intention of the legislature: *Joy v. Thompson*, 1 D. 373; *Willard v. Longstreet*, 2 D. 172; *Malonny v. Mahar*, 1 M. 26.

123. Statutes *in pari materia*—those having relation to any particular class of persons or class of duties—are to be construed together: *People v. May*, 3 M. 598.

124. Statutes *in pari materia* often shed much light upon the true construction of a particular statute in a doubtful case: *Galpin v. Abbott*, 6 M. 17, 34.

125. Other statutes *in pari materia* may aid in determining the sense in which a term is used in a statutory provision: *People v. McKinney*, 10 M. 54, 84.

126. In order to ascertain the real intent it is often necessary to consider the provision in question in connection with other statutes: *Whipple v. Saginaw Circuit Judge*, 26 M. 342.

127. Where two statutes simultaneously enacted relate to officers of courts, and to the persons who may prosecute and defend suits in them, they must receive such a construction as will render them consistent with each other: *People v. May*, 3 M. 598.

128. Statutes *in pari materia* should be construed together as one act; so held of the chapters in R. S. 1846 relating to exceptions and writs of error in civil and in criminal causes: *Shannon v. People*, 5 M. 36.

129. H. S. §§ 9548-9556, providing for trying criminals upon informations, must be construed with reference to other statutes referring to criminal prosecutions: *Washburn v. People*, 10 M. 372.

130. Acts *in pari materia* considered in construing a statute appropriating lands for the construction of a state road: *People v. State Land Office Commissioner*, 23 M. 270.

131. The provisions of H. S. § 1041, making taxes upon real estate a charge against the person owing the same on the second Monday of

May of the year in which they are assessed, construed in connection with previous statutes *in pari materia*: *Harrington v. Hilliard*, 27 M. 271.

132. For the purpose of determining how far the absence in the registry of a deed of any mark or device indicating a seal, or of any statement of the register that the original was sealed, would affect the validity of the record entry as evidence of title, the contemporaneous statutes governing the execution and sealing of deeds and their registry are regarded as *in pari materia*: *Starkweather v. Martin*, 23 M. 471.

133. When the law declares that a debtor's disposal of his property with intent to defraud his creditors shall be void at their instance, and at the same time declares that specific property of his shall be exempt as against their adverse claims, these provisions are *in pari materia*, and must be construed together; and the latter provision must be held to except this exempt property from the operation of the former provision: *Smith v. Rumsey*, 38 M. 188.

134. A statute forbidding sales of liquor on legal holidays, and other acts concerning privileged days, are *in pari materia*, and are to be considered together in determining what days are contemplated: *Reithmiller v. People*, 44 M. 280.

135. R. S. 1846, p. 227, § 71 (C. L. 1871, § 2641; see H. S. § 5039), in regard to changing school-district bounds, and the act of 1871 (C. L. 1871, § 8725; see H. S. § 5185) concerning alteration of graded school districts, are *in pari materia*, and must be considered together, and the meaning of the later enactment determined by comparing it with the other: *Simpkins v. Ward*, 45 M. 559.

136. Statutory provisions relating to judgment creditors of corporations and to receivers thereof construed together as *in pari materia*: *Turnbull v. Prentiss Lumber Co.*, 55 M. 387, 394.

(g) *Language adopted from other statutes.*

137. Phrases adopted from former statutes are usually to be taken as they were previously construed: *People v. Tyler*, 7 M. 161.

138. A statute adopting by reference parts of another statute must be construed precisely as if such adopted provisions had been embodied in it; and such a reference to a section of another statute cannot broaden or enlarge the scope of the language of such a section beyond what it would import if literally re-enacted in the new statute in the place

it was designed to fill: *Clay v. Penmoyer Creek Imp. Co.*, 34 M. 204.

139. Where specific regulations in a general law are adopted in a local law by words of general reference, subsequent changes therein are not necessarily adopted also, unless the intent to do so is clear: *Darmstaetter v. Moloney*, 45 M. 621.

140. An English statute adopted from the statutes of New York, and the meaning of which had been settled by a long course of judicial decisions, must be presumed to have been adopted in the same sense and with the same extent of application — so far as no alteration is made — which had been given to it by the courts in England and in New York: *Shaw v. Hoffman*, 25 M. 162.

141. It is presumed that in adopting provisions from the statutes of another state the legislature was aware of the judicial construction they had received in that state, and that the intent was in accordance with such a construction: *Stadler v. Moors*, 9 M. 264.

142. As a general rule it may be inferred that the legislature, in adopting a statute from another state which has there been judicially construed, intended to give it the same interpretation it had there received: *Drennan v. People*, 10 M. 169.

143. Our legislature, in adopting our justices' act mainly from the state of New York, may reasonably be supposed to have intended to adopt it with the construction settled by the practice and course of decisions there: *Harrison v. Sager*, 27 M. 476.

144. Our statute of partition, having been adopted in substance from that of New York, is presumed to have been adopted with the construction previously given to it by the courts of that state in regard to a wife's right to be made a party: *Greiner v. Klein*, 28 M. 12.

145. Our probate and limitation laws were adopted from Massachusetts with the construction put upon them by the courts of that state: *Campau v. Gillett*, 1 M. 416.

146. In adopting, in 1838, from the Massachusetts statute the provision in H. S. § 1456, requiring persons travelling in a highway to "drive to the right of the middle of the travelled part" of the road, the legislature presumably adopted it with the meaning as previously settled by the courts of that state: *Daniels v. Clegg*, 28 M. 32.

147. And a contrary interpretation subsequently adopted by those courts will not be followed here: *Ibid.*

148. The rule that a statute adopted from another state is adopted with the judicial construction there given it is not always ob-

served, and never where such construction and the statute construed are repugnant to our constitution: *Risser v. Hoyt*, 58 M. 185.

(h) *Legislative interpretation.*

149. A legislative interpretation of old laws has no judicial force; whether right or wrong must be determined by the statutes themselves: *Frey v. Michie*, 68 M. 323.

150. Legislative construction of past legislation has judicial force for the future only, yet it may properly be considered for the light it throws on doubtful language: *Drain Commissioner v. Baxter*, 57 M. 127.

151. The language of the saving clause in a repealing act is to be construed in the light of a state policy that has existed for a quarter of a century in regard to the subject-matter; and while such state policy will not prevail over a clear and distinct enactment, it may go far to explain any ambiguous or doubtful language: *Blackwood v. Van Vleit*, 80 M. 118.

152. Legislative recognition in a statute of the previous existence of a law cannot so operate upon the past as to give a previous existence to a law which had not existed in fact: *Trask v. Green*, 9 M. 358.

153. The actual state of the law is not changed by any misapprehension of the legislature concerning the real fact; and legislation enacted on the assumption that a certain remedy exists cannot be construed as establishing such remedy: *Van Norman v. Jackson Circuit Judge*, 45 M. 204.

154. That the legislature has proceeded to enact a law on an inaccurate opinion of the true meaning and effect of an earlier statute cannot change the earlier law; so, after the passage of act 65 of 1877, providing that a wife might bar her dower by a separate deed to whomsoever was the holder of the legal title, it was held that a previous release of her dower to her husband was valid in view of the married woman's act of 1855: *Rhoades v. Davis*, 51 M. 306.

That a statute may be confirmed by the subsequent legislative recognition of it, without express confirmation, see CONSTITUTIONS, § 526.

(i) *Practical construction.*

155. The general practice should have some weight in the construction of a statute: *Shannon v. People*, 5 M. 36, 49.

156. The practical construction of a law by long, notorious and unquestioned usage will be regarded in construing it: *Cameron v. Merchants', etc. Bank*, 87 M. 240.

157. Long practical construction of an important statute as valid, and acquiescence in and reliance on the faith of it, will outweigh any merely technical objections to its constitutionality based on a want of precision in setting forth its purpose in its title: *Continental Improvement Co. v. Phelps*, 47 M. 299.

158. Much respect is due to practical construction when it does no violence to language and has been so long continued as to show general acquiescence: *Employers' Liability Co. v. Insurance Commissioner*, 64 M. 614.

159. Contemporary construction of a statute, if general and acquiesced in by all concerned, is entitled to respect: *Smith v. Eaton Supervisors*, 56 M. 217.

160. But where it was claimed that a provision in a city charter making the mayor a member of the county board of supervisors was an inadvertence, the fact that for three years the mayor's predecessors had not sought to compel the recognition of their right to sit with the board was not entitled to much weight as a contemporary construction: *Ibid.*

161. The uniform understanding of the public, and the uniform practice of the executive branch of the government corresponding with such understanding, should be held of equal force and obligation with judicial or legislative construction: *People v. May*, 3 M. 598.

162. The reception of and long acquiescence in a statute as authoritatively published may justly be treated as a ratification of it in that form by the sovereign people: *Pease v. Peck*, 18 How. (U. S.) 595.

163. Long practical construction by an executive department, especially when coupled with legislative sanction, should have weight in the construction of a statute: *Clark v. Mowyer*, 5 M. 462.

164. The construction placed by an executive department upon a statute affecting the performance of its duties is not lightly to be questioned, especially when it has become established by long usage and relates to matters of form only. But practical construction must not be allowed to defeat the manifest purpose of the statute: *Westbrook v. Miller*, 56 M. 148.

165. Where a statute concerning the administration of tax-collectors' oaths has been uniformly construed in a certain way by the state and county authorities, and the construction has become a rule of property, many titles depending upon it, the maxim *communis error facit jus* may be invoked if the statute is doubtful: *Malonny v. Mahar*, 1 M. 26.

166. A construction placed by former com.

missioners of insurance upon a statute relating to foreign companies is not compulsory upon a present officer where the law has not been in force long enough to make it evident that such construction has been brought to the attention of the various governmental departments and been approved by their acquiescence: *Employers' Liability Assurance Co. v. Insurance Commissioner*, 64 M. 614.

167. The practical construction given by the interior department of the general government, in reliance upon the uniform opinions of the attorney-general's office, to a statute granting lands, should be followed by the state authorities until reversed by the federal courts: *Johnson v. Ballou*, 28 M. 379.

168. If a city has obtained money on a particular construction of a statutory provision, and then adopts a different construction to avoid payment, it is proper in case of doubt to give some weight to the first construction: *Port Huron v. McCall*, 46 M. 565.

169. A practical construction put by the members of a city's common council upon their charter powers in appointing certain officers by majority vote of members *elect*, followed: *Baker v. Port Huron Police Commissioners*, 62 M. 327.

170. Long practical construction and acquiescence create a presumption of validity: *People v. Hurst*, 41 M. 328; *Stockle v. Silsbee*, 41 M. 615.

(j) Reasonable construction.

171. A statute should be given a reasonable construction: *Kephart v. Farmers', etc. Bank*, 4 M. 602; *Waterman R. E. Exchange v. Stephens*, 70 M. — (June 22, '89).

172. Every city charter should be rationally construed: *Torrent v. Muskegon*, 47 M. 115.

173. Where the words are not explicit the intention is to be taken or presumed according to what is consonant to reason and good discretion: *Green v. Graves*, 1 D. 351; *Sibley v. Smith*, 2 M. 496.

(k) Liberal construction.

174. A remedial statute should be liberally construed for the advancement of the remedy: *Shannon v. People*, 5 M. 36; *De Vries v. Conklin*, 22 M. 255.

175. The statute enabling married women to make contracts, etc., is remedial, and should be construed liberally to effectuate its general purpose: *De Vries v. Conklin*, 22 M. 255.

176. Statutes exempting property from ex-

ecution are remedial, and should be construed liberally for the debtor's benefit: *Alvord v. Lent*, 23 M. 369; *Stewart v. Welton*, 32 M. 56; *Fisher v. McIntyre*, 66 M. 681.

177. Such statutes are beneficial and are to be construed fairly and sensibly: *Rosenthal v. Scott*, 41 M. 632.

178. Hence the statute exempting property from execution is to be construed as exempting the same from garnishment: *Wilson v. Bartholomew*, 45 M. 41.

179. Homestead laws are to be construed liberally to effect the benevolent purpose in view: *Barber v. Rorabeck*, 36 M. 399; *Lozo v. Sutherland*, 38 M. 168; *Bouchard v. Bourassa*, 57 M. 8.

180. The policy of a statute should not be defeated by construing it liberally: *Bachelor v. Brown*, 47 M. 366.

(l) Strict construction; penal statutes.

181. Statutes in derogation of the common law are to be construed strictly: *Sibley v. Smith*, 2 M. 496; *Tannahill v. Tuttle*, 3 M. 104, 120; *Maynards v. Cornwell*, 3 M. 309; *Brown v. Fifield*, 4 M. 322; *James v. Howard*, 4 M. 446; *Tong v. Marvin*, 15 M. 60, 72.

182. Hence, the principle that every grant of power carries with it the usual and necessary means for the exercise of that power, and that the power to convey is implied in the power to sell, does not apply in the construction of statutes that are in derogation of the common law, and the effect of which is to divest a citizen of his real estate: *Sibley v. Smith*, 2 M. 496.

183. As to statutes in reference to tax sales the rule of construction is no more strict or liberal than generally; in all cases alike the legislative intent governs: *Clark v. Mowyer*, 5 M. 462.

184. Statutes that point out new modes of procedure, and especially where their effect is to deprive a citizen of his property, must be construed strictly: *James v. Howard*, 4 M. 446.

185. Statutes that attempt, in derogation of the common law, to create a liability cannot be enlarged or extended by construction: *Detroit v. Putnam*, 45 M. 263; *Detroit v. Chaffee*, 70 M. 80.

186. Statutory provisions permitting the summary enforcement of private charges, such as mechanics' liens, on property without the assent of the owner or judicial sanction, being in derogation of the common law, cannot be extended in their operation beyond the plain and fair sense of the terms in which

they are expressed: *Wagar v. Briscoe*, 38 M. 587.

That the statutory provisions relating to attachments are strictly construed, see ATTACHMENT, § 1. So as to GARNISHMENT: See that title, §§ 2-9.

187. Statutes of limitation are not to be defeated by undue strictness of construction: *Ten Eyck v. Wing*, 1 M. 40; *Toll v. Wright*, 37 M. 93.

188. But are to be construed with the same favor as other statutes to effect the legislative intent: *Gorman v. Newaygo Circuit Judge*, 27 M. 138. And see 36 M. 487; 4 M. 508; 17 M. 28.

189. A concession from the state remitting a penalty for non-payment of taxes should not be defeated by strictly construing the statute: *Flint & P. M. R. Co. v. Saginaw County Treasurer*, 32 M. 260.

190. Laws exempting property from taxation are in derogation of equal rights, and must be construed strictly: *Detroit Young Men's Society v. Detroit*, 3 M. 172, 182.

191. And in construing such statutes the narrowest meaning is to be taken that will fully carry out the legislative intent: *East Saginaw Manuf. Co. v. East Saginaw*, 19 M. 259, 279.

192. All reasonable inferences of construction should be against a position which rests not on equities but on mere technicalities: *Johnson v. Ballou*, 28 M. 379.

193. Criminal statutes must be construed strictly: *People v. Reynolds*, 71 M. — (July 11, '88).

194. A criminal statute cannot be enlarged by construction, nor restricted where the evident purpose is to make it comprehensive: *People v. Caton*, 25 M. 388.

195. Criminal statutes should be so construed as to include what is fairly and reasonably within the legitimate scope of the language, but not to include what is not within the language though partaking of similar mischievous qualities: *People v. Reilly*, 50 M. 384.

196. Penal statutes must be strictly construed, and cannot be enlarged by construction or intentment further than the intent fairly requires: *Gilbert v. Kennedy*, 22 M. 5; *Shaw v. Clark*, 49 M. 384; *Van Buren v. Wylie*, 56 M. 501; *Carver v. Detroit & S. P. R. Co.*, 61 M. 584; *Fox v. Francher*, 66 M. 536.

197. When a law is susceptible of penal applications in special cases, such applications must be closely confined to cases within its principle: *Wallace v. Finch*, 24 M. 255.

198. Penal statutes are not flexible, and cannot be made to embrace anything that was

not within the intent of the legislature in passing them: *Shaw v. Clark*, 49 M. 384.

199. Nor can acts not expressly forbidden by them be reached merely because they resemble the offence provided against or are equally and in the same way demoralizing or injurious; they cannot be made to embrace anything which was not within the intent of the legislature: *Ibid.*

200. Where an amendment is highly penal in character it precludes a liberal construction of the title of the original act so as to embrace objects not within the meaning of the language used therein: *People v. Gadway*, 61 M. 285.

201. It will not be presumed that a statute intended to remove disabilities adds new ones: *Parsons v. People*, 21 M. 509.

202. Penal laws defined: *Fennell v. Bay City*, 36 M. 186.

203. A statute giving creditors a remedy against corporate officers for official defaults is penal: *Breitung v. Lindauer*, 37 M. 217.

204. Otherwise held as to a statute holding the estate of a non-resident stockholder ratably liable for debts of his bank: *Grand Rapids Savings Bank v. Warren*, 52 M. 557.

(m) *Strict pursuance of remedy.*

205. Where a statute gives a new right and prescribes a particular remedy the party is confined to that remedy: *Thurston v. Prentiss*, 1 M. 198; *Craig v. Butler*, 9 M. 21.

206. Where a proceeding is in derogation of common-law principles it must depend for its validity upon a strict conformity to the statute: *Weimer v. Bunbury*, 30 M. 201.

207. In cases where the proceedings are not according to the course of the common law, the party seeking any benefit from them is bound to show their conformity to the statute under which they are had: *Crane v. Hardy*, 1 M. 56.

208. A statute, even when it is remedial, must be followed with strictness where it gives a remedy against a party who would not otherwise be liable: *Chicago & N. E. R. Co. v. Sturgis*, 44 M. 538.

209. When the right to proceed is wholly statutory the statute must be substantially followed: *Dickinson v. Van Wormer*, 39 M. 141.

210. A statute under which a party is to be deprived of his property by summary and *ex parte* proceedings must be strictly followed: *Newsom v. Hart*, 14 M. 238; *Hasceig v. Tripp*, 20 M. 216.

211. The rigorous rules that apply to pro-

ceedings *in invitum* contrary to the course of the common law should not be applied to statutory foreclosures, though every statutory requirement must be adhered to. All provisions must be construed reasonably: *Lee v. Clary*, 38 M. 223.

212. A statute authorizing substituted service of process must be strictly complied with: *Colton v. Rupert*, 60 M. 318.

Further as to strict compliance with statutory requirements, see ATTACHMENT, § 1: CONSTITUTIONS, §§ 239, 240; GARNISHMENT, §§ 2-9.

(n) *Directory and mandatory provisions.*

213. A statutory provision prescribing the course of proceeding to be pursued by public officers cannot be treated as directory merely and not mandatory, where that which is required to be done is in the nature of a condition precedent to subsequent action, and not simply a step in the course of the proceedings prescribed with a view to a regular and prompt transaction of the business in the progress of which such step is to be taken: *Hoyt v. East Saginaw*, 19 M. 89.

214. Where a statute authorizing a public agent to let contracts prescribes the mode—e. g., giving notice in a newspaper for sealed proposals—such mode of exercise of the power is not directory merely, but must be followed or the contract is void: *State Prison Agent v. Lathrop*, 1 M. 488.

215. Many matters in the assessment of taxes are deemed directory because the substantial rights of the tax-payer are not affected by them: *Sibley v. Smith*, 2 M. 496.

216. But those provisions of tax laws, a departure from which would be prejudicial to the owners of property taxed, cannot be held to be merely directory: *Ibid.*; *Clark v. Crane*, 5 M. 151; *Hoyt v. East Saginaw*, 19 M. 39; *Steckert v. East Saginaw*, 23 M. 104.

217. So held of a provision requiring a particular tax to be placed in a certain column on the roll: *Case v. Dean*, 16 M. 12.

218. Provisions as to description of land for taxation are mandatory: *Amberg v. Rogers*, 9 M. 332.

219. So is a provision requiring resident and non-resident real estate to be assessed separately: *Rayner v. Lee*, 20 M. 884; *Hanscom v. Hinman*, 30 M. 419; *Seymour v. Peters*, 67 M. 415.

220. Provisions of H. S. § 1081 as to apportionment among townships of amount to be

raised for state and county taxes are mandatory: *Boyce v. Sebring*, 66 M. 210.

220. Charter requirement as to apportionment among wards of amount to be raised by taxation held directory merely where data were already fixed and correct amount was assessed in each ward: *Fay v. Wood*, 65 M. 890.

221. Statutes limiting the amount of taxes that may be levied are mandatory: *Boyce v. Sebring*, 66 M. 210.

222. A charter provision requiring commissioners in reporting assessment to common council to report valuation of respective lots is mandatory, even when assessments are not made on a basis of valuation: *Steckert v. East Saginaw*, 23 M. 104.

223. So is the date fixed by statute for tax sales mandatory: *Houghton v. Auditor-General*, 41 M. 28.

224. Statutes fixing a time for the doing of an act are considered as directory merely where the time is not fixed for the purpose of giving a party a hearing, or for some other purpose important to him: *Fay v. Wood*, 65 M. 890.

225. Statutory provision as to time of certification by clerk to supervisor of amount to be raised for township purposes held directory merely: *Smith v. Crittenden*, 16 M. 152; *Peninsula Iron, etc. Co. v. Crystal Falls*, 60 M. 510.

226. H. S. § 9577, requiring exceptions in criminal cases to be presented to the judge before the end of the term, is, as to the settlement of the bill, directory merely: *Crofoot v. People*, 19 M. 254.

227. A statute requiring circuit judge to assign on first day of next succeeding term a day for trial of defendant arraigned in county court was, as to time, directory merely: *People v. Doe*, 1 M. 451.

228. H. S. § 578 is to be regarded as directory merely, so far as it names the nominal obligees in sheriffs' bonds: *Bay County v. Brock*, 44 M. 45.

229. So held of a statutory requirement as to the manner in which election inspectors shall keep ballots: *People v. Higgins*, 3 M. 233.

230. And of a charter requirement as to notice of holding of election: *People v. Hartwell*, 12 M. 508; *People v. Witherell*, 14 M. 48.

231. And of a statute requiring return on chancery appeal to be made to nearest clerk's office: *Beebe v. Young*, 13 M. 221.

232. And of a statute requiring non-resident plaintiffs to give security for costs before process issues in their favor: *Parks v. Goodwin*, 1 D. 56.

233. So is the statute directory which requires each justice of the peace to keep a docket and enter therein the judgments rendered by him: *Hickey v. Hinsdale*, 8 M. 267.

234. So is H. S. § 6486, requiring the circuit judge who tries a case without a jury to give his decision on or before first day of next term: *Rawson v. Parsons*, 6 M. 401; *Stansell v. Corning*, 21 M. 242.

235. So is the provision in H. S. § 8505 requiring person selling mortgaged lands on statutory foreclosure to indorse on the deed the time when it will become operative: *Johnstone v. Scott*, 11 M. 232; *Doyle v. Howard*, 16 M. 261.

236. R. S. 1846, ch. 52, was permissive, not mandatory, as to incorporation of religious societies by trustees: *Smith v. Bonhoof*, 2 M. 115.

237. Statute providing that municipality voting aid to railroad shall within sixty days thereafter issue its bonds, etc., is simply permissive as to time: *Chickaming v. Carpenter*, 106 U. S. 668.

238. H. S. § 8503, requiring distinct tracts or lots to be sold separately on foreclosure by advertisement is not directory merely: *Lee v. Mason*, 10 M. 403.

239. Statutory provisions as to the execution and deposit of sheriff's deed on foreclosure by advertisement are mandatory and not merely directory: *Doyle v. Howard*, 16 M. 261.

240. H. S. § 5065, in providing that school teachers' contracts shall contain provisions requiring them to keep lists of pupils, etc., is directory merely: *Everett v. Cannon School District*, 30 M. 249.

241. Every provision of the statute of frauds should be strictly observed, and steadily enforced by the courts: *Alderton v. Buchoz*, 3 M. 322.

242. If an affirmative statute that is introductory of a new law directs a thing to be done in a certain manner, it shall not, even though there are no negative words, be done in any other manner: *Brooks v. Hill*, 1 M. 118; *Sibley v. Johnson*, 1 M. 380.

243. Where a statute creates a new offence and prescribes a particular judgment, that judgment only can be rendered; and the course of proceeding established by law to produce such a judgment is the one appropriate to the case: *Pardee v. Smith*, 27 M. 83.

(o) Prospective and retrospective.

244. Retrospective laws defined: *People v. Collins*, 3 M. 343, 391.

245. Statutes are not to be given a retrospective construction unless the language thereof clearly shows such to have been the intention of the legislature: *Bronson v. Newberry*, 2 D. 38; *Scott v. Smart's Executors*, 1 M. 295, 301; *Harrison v. Metz*, 17 M. 377; *Bay City & E. S. R. Co. v. Austin*, 21 M. 390; *Merrill v. Kalamazoo*, 85 M. 211; *Finn v. Haynes*, 87 M. 63; *Maxwell v. Bay City Bridge Co.*, 46 M. 278.

246. Legislation is to have a prospective operation only, except where the contrary intent is expressly declared or is necessarily to be implied from the terms employed: *Harrison v. Metz*, 17 M. 377.

247. A statute applies to future transactions only unless in its express words given effect upon transactions previously had, or unless some of its terms cannot be otherwise answered: *Ferrin v. Kellogg*, 37 M. 316.

248. Statutes affecting valuable rights are presumed not to operate retrospectively: *Van Fleet v. Van Fleet*, 49 M. 610.

249. Presumptively, tax laws are intended to have a prospective operation only; and the remedies they provide for collection will not be applied to taxes previously laid unless an intent that they shall be is clearly manifested; and a title that is prospective in meaning precludes retrospective operation even though the statute contains retrospective provisions: *Clark v. Hall*, 19 M. 356; *Smith v. Auditor-General*, 20 M. 398; *Auditor-General v. Monroe Supervisors*, 36 M. 70; *Fuller v. Grand Rapids*, 40 M. 395; *Thomas v. Collins*, 58 M. 64; *Auditor-General v. Iosco Circuit Judge*, 58 M. 345; *Auditor-General v. Saginaw Supervisors*, 62 M. 579; *Nester v. Busch*, 64 M. 657; *Seymour v. Peters*, 67 M. 415 (Oct. 27, '87); *Phillips v. New Buffalo*, 68 M. 217 (Jan. 19, '88); *Hall v. Perry*, 72 M. — (Nov. 1, '88); *McNaughton v. Martin*, 72 M. — (Nov. 1, '88).

250. So, an amendment to the tax law allowing sale to be made to pay marshal's fees will not apply to assessments made before the passage of the law, unless plainly so intended: *Fuller v. Grand Rapids*, 40 M. 395.

251. A statute penal in its nature can have no retroactive effect: *Newkirk v. Tracey*, 61 M. 174.

252. A statute which simply gives an efficient remedy for the enforcement of a duty that existed before is not given retrospective operation when applied to a case where the duty had been neglected before it was passed: *Merrill v. Kalamazoo*, 35 M. 211.

253. A statute legalizing a tax-roll and healing defects therein will be so construed as not to affect an existing judgment for trespass

against officers who seized and sold property to pay the tax; and this though *certiorari* is pending to review the judgment: *Moser v. White*, 29 M. 59.

254. A certain construction applied to a statute regulating the fixing of officer's salaries held not to give the act a retrospective operation: *Knappen v. Berry Supervisors*, 46 M. 22.

255. Act 236 of 1881, authorizing administrators to take possession of their intestates' real estate, was not retroactive in its terms: *Van Fleet v. Van Fleet*, 49 M. 610.

256. H. S. § 6738, regulating appeals in chancery, held not to apply to appeals already perfected: *Perrin v. Kellogg*, 37 M. 816.

257. A law postponing all liens to the lien of the tax imposed by it held not applicable to liens that attached before its passage: *Finn v. Haynes*, 87 M. 62.

258. The act of 1842 (S. L. 1842, p. 70), repealing previous exemption laws and exempting from execution property not previously exempted by statute, was held applicable to executions for the collection of debts contracted before the act took effect: *Rockwell v. Hubbell's Administrators*, 2 D. 197.

259. H. S. § 1590, permitting a guaranty of payment or collection of negotiable paper to be sued by any subsequent holder in his own name, applies to existing as well as to future contracts: *Waldron v. Harring*, 28 M. 493.

260. Whether a statute allowing pay for improvements previously made on lands without the owner's consent would be valid where no previous law had allowed such reimbursement, *quere*: *Guild v. Kidd*, 48 M. 307.

261. The pending of proceedings to reverse irregular action of supervisors does not preclude their confirmation by statute: *People v. Ingham Supervisors*, 20 M. 95.

262. A statute ordering a re-assessment for a public improvement could not cut off any right before existing to payment for the old assessment: *Whitely v. Lansing*, 27 M. 181; *French v. Lansing*, 30 M. 378.

As to what retrospective statutes are constitutional, see CONSTITUTIONS, §§ 208-227.

III. REPEAL.

(a) *In general; what constitutes.*

263. It is competent for the legislature in the same act to repeal any former one within its purview, although every other provision in the repealing act is unconstitutional. The question is one of legislative intent, and it is only necessary that words should be used that

show an intent to repeal, irrespective of the unconstitutional provisions. But an act repealing all acts and parts of acts inconsistent with its provisions does not repeal an act inconsistent only with a void provision in the repealing act: *Campau v. Detroit*, 14 M. 276.

264. A mere legislative provision not contained in the constitution is repealable by subsequent legislation, and any subsequent act clearly inconsistent with it would thus far repeal it; so held of the act of April 25, 1846 (C. L. 1857, ch. 88), reserving from sale all public lands known to contain minerals: *People v. State Land Office Commissioner*, 28 M. 270.

265. The legislature has power to repeal existing remedies unless such repeal impairs the obligation of a contract: *Robinson v. The Red Jacket*, 1 M. 171. And see CONSTITUTIONS, § 158.

That a statute imposing a penalty upon directors in case of neglect to perform duty may be repealed without disturbing contract obligations, see CORPORATIONS, § 110.

As to validity of repealing statutes, see CONSTITUTIONS, III, (h), (i).

As to validity of repeals of corporate charters, see CONSTITUTIONS, §§ 182, 183, 442-445, 447.

266. The Revised Statutes of 1846 held not to repeal, on taking effect, a special act passed on the same day with the revision and given immediate effect: *Crane v. Reeder*, 22 M. 323.

267. An act repealing the charter of the "Bank of Oakland County" cannot be construed to be a repeal of the charter of "The President, Directors and Company of the Oakland County Bank." It is not necessary that a repealing act should correspond exactly, in naming the corporation, with the act of incorporation which it is meant to repeal; but there must be such a correspondence as will leave no doubt of the intention of the legislature: *People v. Oakland County Bank*, 1 D. 282.

268. Where a subsequent statute covers the whole ground occupied by an earlier statute it repeals by implication the former statute, though there be no repugnance: *Shannon v. People*, 5 M. 71; *Feige v. M. C. R. Co.*, 62 M. 1.

269. A statute is repealed by a later one in so far as its provisions are inconsistent with it or are covered by it: *Attorney-General v. Amos*, 60 M. 372.

270. A new statute covering the same ground with an old one supersedes it for all further cases without the necessity of repealing words: *People v. Hobson*, 48 M. 27.

271. Where two acts relate to the same

subject-matter, and the later one embraces the whole ground covered by the provisions of the former, introducing also new qualifications or modifications, the former act is repealed: *People v. Bussell*, 59 M. 104.

272. A general statute requiring a longer time for township meetings is superseded for the time by a statute fixing a shorter notice for specific meetings for a particular purpose: *Miller v. Grandy*, 18 M. 540.

273. Where a statute contains provisions regulating the bringing of actions against corporations organized under it, they must be regarded as exceptions to earlier general provisions on the same subject, if inconsistent: *Dewey v. Central Car & Manuf. Co.*, 42 M. 399.

274. A second law on the same subject without a repealing clause or negative words does not repeal a former one unless so clearly repugnant as to imply a negative: *Beals v. Hale*, 4 How. (U. S.) 37.

275. An amendment operates as a repeal so far as it is repugnant to the original act; and if not repugnant in express terms, it still effects a repeal if it covers the whole subject of the amended act and contains new provisions showing that it was meant as a substitute: *Breitung v. Lindauer*, 37 M. 217.

276. Whether one law repeals another on the same subject to which it does not expressly refer is largely a question of legislative intent; if both can have effect, both must stand: *People v. Gustin*, 57 M. 407.

277. Where a statutory provision was repealed without change in what purported to be an amendatory act and the latter was afterward repealed, the original provision was repealed also: *Moody v. Seaman*, 46 M. 74.

278. Statutes can only be repealed by express subsequent enactment, or by necessary implication from a positive repugnancy to the provisions of a later act; but in the latter case the repeal is only to the extent of the repugnancy: *Connors v. Carp River Iron Co.*, 54 M. 168.

279. A statute cannot be modified or superseded by one of earlier date, or perhaps by one of the same date which precedes it in the authorized publication of the laws: *Thomas v. Collins*, 58 M. 64.

280. Two local acts upon the same subject-matter prescribed different punishments for a violation of their provisions. Held, that the two could not stand together, but that the former was repealed by the latter: *People v. Bussell*, 59 M. 104.

281. The penal provisions of a statute are not superseded by an unnecessary municipal

ordinance to the same effect: *Wayne County v. Detroit*, 17 M. 390.

282. The general rule that the creation of a smaller penalty supersedes a larger one previously prescribed for the same offence was held inapplicable where mitigated provisions were introduced into a city charter not with any idea of changing the state law, but under the erroneous notion that they created municipal grievances in which no one was interested but the city: *People v. Swift*, 59 M. 529.

283. A general statute does not impliedly repeal provisions of special acts or charters relating to the same subject: *Hewitt v. Saginaw Circuit Judge*, 71 M. — (July 11, '88).

284. The re-enactment or modification of charter provisions cannot be held to affect special legislation outside of the charter without a clear indication of such an intent: *Taggart v. Detroit*, 71 M. — (June 22, '88).

285. Village charters will not be so construed as to change the operation of the general tax law unless such intent is clearly expressed: *Howell v. Cassopolis*, 35 M. 471.

286. Repeals by implication are not favored: *Brown v. McCormick*, 28 M. 215; *Breitung v. Lindauer*, 37 M. 217; *Ryan's Case*, 45 M. 173; *Connors v. Carp River Iron Co.*, 54 M. 168; *People v. Gustin*, 57 M. 407; *People v. Grand Rapids & W. R. Co.*, 67 M. 5.

287. So held where the repeal claimed would have reduced a criminal penalty: *People v. Gustin*, 57 M. 407.

288. Repeals by implication should not be established without satisfactory reason to believe the legislature intended them: *Gordon v. People*, 44 M. 485.

289. When a statute has been once passed for the express purpose of reducing the term of imprisonment under an old law, any implied restoration that would operate to repeal an important statute not referred to must clearly indicate such intention: *Ibid.*

(b) Effect of repeal.

290. Where an act done while a statute was in force is forbidden and therefore illegal, it does not become valid when the statute is repealed: *Ludlow v. Hardy*, 38 M. 690.

291. Act 43 of 1875 repealed the act for the formation of canal and harbor companies (C. L. 1871, ch. 84), with the proviso that such companies should "continue to have legal existence for the purpose of closing up their business only in accordance with the provisions of ch. 180 of the compiled laws." Said ch. 180, besides including one chapter of the Revised Statutes, contains many provisions in the shape

of independent statutes passed at different times, and contains provisions for the dissolution of some corporations different from those applicable to others. *Held*, that the reference to said ch. 130 was too vague to incorporate any of its provisions into the repealing law, and that the repealing clause, while prohibiting a continuance in ordinary business, left the corporate existence unchanged for winding-up purposes: *Bewick v. Alpena Harbor Co.*, 39 M. 700.

292. The repeal of a law giving a court power to license administrators to sell real estate after the license has been granted, but before a sale has been made, is a revocation of the license: *Campau v. Gillett*, 1 M. 416.

293. The repeal of a statute giving administrators power to take and hold possession of their intestate's lands operates to deprive them of the right to possession taken before such repeal: *Campau v. Campau*, 25 M. 127.

294. Where an act appropriated highway taxes collected in a certain town, among others, to a special purpose, and appointed commissioners to disburse the same, but before the taxes had been paid over, though after legal proceedings had been commenced by the commissioners to compel payment, the act was amended by striking out all that related to such town, and the amendatory act contained no saving clause, it was *held* that the right under the original act to the moneys collected in such town was thereby terminated: *Tivey v. People*, 8 M. 128.

295. Where a statute giving one remedy is repealed and a new remedy provided, with a saving of *rights accrued*, the saving clause will not authorize the institution of suits under the repealed statutes where the cause of action accrued before: *Robinson v. The Red Jacket*, 1 M. 171.

296. A penal statute being repealed without a saving clause of penalties which had accrued under it, such penalties cannot afterwards be recovered: *Engle v. Shurts*, 1 M. 150; *Breitung v. Lindauer*, 37 M. 217.

297. A statute which authorizes a judgment to be entered for double the damages found by the jury is in the nature of a penal statute, the repeal of which before judgment, though after verdict, will defeat the right to such recovery; no personal equity to such right underlying the law or arising upon it appearing: *Bay City & E. S. R. Co. v. Austin*, 21 M. 390.

298. The repeal of a general statute authorizing the formation of corporations for definite periods does not necessarily shorten the existence of a particular corporation or

destroy corporate franchises: *Bewick v. Alpena Harbor Co.*, 39 M. 700.

299. The saving clause in R. S. 1846, p. 598, § 9, as to rights accrued by adverse possession, etc., embraced rights accruing under the act of Feb. 17, 1847, relating to possession under tax titles: *Perry v. Hepburne*, 4 M. 165.

300. While the repeal of a statute generally ends all criminal proceedings under it, it does not do so in cases which have been put in judgment, and in which the judgment has been transferred by *certiorari* to a higher court and affirmed: *People v. Hobson*, 48 M. 27.

301. The punishment of an offence under an old statute is not inconsistent with a new law which repeals acts inconsistent therewith, but which applies only to future cases, and to those in substantially the same way: *Ibid*.

302. It *seems* that the repeal by the act of 1881 (H. S. §§ 2270-2283) of the act of 1879, regulating the sale of liquors, was not retrospective, and did not supersede existing criminal judgments which had only been suspended for review: *Ibid*.

303. Where a repealing statute substantially re-enacts the provisions of the repealed statute, suits commenced under the repealed statute are not affected by the repeal: *Alexander v. Big Rapids*, 70 M. 224.

304. Where certain provisions of a statute were substantially re-enacted in a later act which repealed all contravening provisions, but expressly saved rights accrued thereunder, no rights gained under the former statute were destroyed or changed: *Davenport v. Auditor-General*, 70 M. 192.

IV. AMENDMENT.

Amendments of bills pending passage, see CONSTITUTIONS, §§ 529-540.

305. Any provisions may be introduced by amendment if they are not foreign to the title of the act in which they are inserted; they may relate to a class of details different from those superseded: *Underwood v. McDuffe*, 15 M. 361.

306. If a provision could have been inserted in an original act without repugnance to its title, it cannot be a variance to introduce it as an amendment: *Chippewa Supervisors v. Auditor-General*, 65 M. 408.

307. But amendments including matter foreign to the title are invalid: *Stewart v. Father Matthew Society*, 41 M. 67.

And further as to compliance in amending statute, with constitutional requirement as to title, see CONSTITUTIONS, §§ 563, 571, 578, 585, 587, 588, 592, 596, 600, 606, 621.

308. A section of the compiled laws having been amended, a subsequent amendment will not be invalid because made by reference to the number of the section as it originally stood in the compilation, the section as amended being set forth at length: *Jones v. State Land Office Commissioner*, 21 M. 236.

309. It is not necessary to set forth a section as it stood before it was amended: *Ibid.*

310. The practice of amending by reference to sections instead of by reference to subjects or to the entire statute criticised as an unsatisfactory compliance with the requirements of the constitution; yet where the purpose is plain, it may be carried out, even though the section numbers of the original act and of the amendment are confused: *Comstock v. Superior Court Judge*, 39 M. 195.

311. And, subject to the same criticism, a reference that was incorrect as to the section of the original act, but right as to the section in Howell's Statutes, was held not to vitiate the amendment: *Callaghan v. Chipman*, 59 M. 610.

312. Amendments by implication are not prohibited: *People v. Mahaney*, 18 M. 481; *Underwood v. McDuffe*, 15 M. 361; *People v. Wands*, 23 M. 885; *Mok v. Detroit Building, etc. Assoc.*, 80 M. 511.

313. An amending act may operate to alter the legal operation of other provisions than those that it re-enacts at length: *People v. Wands*, 23 M. 885.

314. An act adding a section to a prior law may amend other sections thereof by implication: *Swartwout v. Michigan Air Line Co.*, 24 M. 389.

315. Subsequent changes in a general law are not necessarily adopted by implication in a charter that had previously adopted specific provisions of the general law: *Darmstaetter v. Moloney*, 45 M. 621.

316. An amended statute is to be understood in the same sense as if it had read from the beginning as it does as amended: *Conrad v. Nall*, 24 M. 275.

317. But this rule will not be applied when its effect would be to defeat the manifest intention of the legislature in adopting the amendment; so held where an amendment adopted twenty-two years after the statute was passed provided that actions on judgments "heretofore rendered" should be barred in ten years after entry thereof: *Parsons v. Wayne Circuit Judge*, 37 M. 287.

As to amendment of corporate charters, see CONSTITUTIONS, §§ 184-188, 441, 446-448, 526.

V. REVIVOR.

318. The Detroit police act having provided that on the appointment by the police board of a superintendent of police or captain of police, the office of city marshal should be abolished, a subsequent legislative act, passed before any such appointment of superintendent or captain of police had been made, changing the number of jurors "to be summoned by the marshal" in proceedings in opening, closing or altering streets, could not have the effect to prevent the office of marshal from being abolished by the appointment under the police act: *People v. Mahaney*, 18 M. 481.

319. Where, in compliance with the constitution, an amendment of a section of a statute is made by setting out the whole section as amended, the merely nominal re-enactment of the words that are not changed does not have the effect of disturbing the whole body of statutes *in pari materia* which have been passed since the first enactment of the section; nor, unless the intent is clear, does it restore a provision that had been impliedly repealed by another statute: *Gordon v. People*, 44 M. 485.

320. Where certain words of a statute have been impliedly repealed by the effect of a later statute, the recital of those words in an act amending the earlier statute, such amendment being made apparently for the sole purpose of introducing a clause relating to a different subject, does not revive those words: *Curbay v. Bellemer*, 69 M. 70 M. 106.

STATUTE OF FRAUDS.

I. SUFFICIENCY OF CONTRACT OR MEMORANDUM.

II. PROMISE TO PAY ANOTHER'S DEBT.

III. AGREEMENTS, ETC., RELATING TO LANDS.

IV. AGREEMENTS RELATING TO THE SALE OF GOODS AND CHATTELS.

(a) *In general.*

(b) *Earnest-money.*

(c) *Delivery and acceptance.*

V. AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR.

VI. AGREEMENTS IN CONSIDERATION OF MARRIAGE.

VII. REPRESENTATIONS AS TO CREDIT, ETC.

VIII. MISCELLANEOUS CASES.

IX. PART PERFORMANCE; EXECUTED OR RATIFIED CONTRACTS.

X. PLEADING AND EVIDENCE; EFFECT OF THE STATUTE.

I. SUFFICIENCY OF CONTRACT OR MEMORANDUM.

1. Whether, under the statute, the contract required to be in writing is not to be treated as one entire contract, so that all the stipulations of both parties must be in writing, *quere: Whipple v. Parker*, 29 M. 369.

2. A promise in writing to pay the debt of another must show the whole terms of the contract; no resort can be had to parol evidence to add to them: *Hall v. Soule*, 11 M. 494.

3. The memorandum of a contract that is not to be performed within a year must embrace all its substantial terms except the consideration; and when essentially defective it cannot be aided by parol evidence: *Palmer v. Marquette & Pacific Rolling Mill Co.*, 32 M. 274.

4. A telegram to "come on at once at a salary of two thousand, conditional only upon satisfactory discharge of business," lacks some of the essential terms of a contract in that it fixes no time for the continuance of the employment and does not even name the employment itself: *Ibid.*

5. H. S. § 6189, which dispenses with the necessity of expressing in any contract required to be in writing the consideration thereof, and permits proof of such consideration by other evidence, does not, it seems, apply to a case where the consideration consisted of counter-promises or executory stipulations to be performed more than a year after the making of the contract: *Whipple v. Parker*, 29 M. 369.

6. Whether or not the statute requires that the memorandum of a contract of sale shall show the price to be made, it must, at all events, show all the other terms of the contract, and also show that it is a contract of sale: *James v. Muir*, 33 M. 223.

7. A telegram in the following words: "I will take double-deck car—hogs; W. C. Bryant will close contract," having reference to a previous parol negotiation and arrangement, is not, under the statute, a sufficient memorandum of a contract. Standing by itself it contains none of the elements of a bargain except quantity: *McElroy v. Buck*, 35 M. 434.

7a. The following memorandum of sale, viz., "John Heffron bought of J. H. Rudell, agent for J. K. Armsby, 300 cases B. M. corn, \$1.25 cash, less one-half per cent. [Signed] J. H. Rudell," is sufficient under the statute of frauds if the alleged agent was authorized to act for the vendor: *Heffron v. Armsby*, 61 M. 505.

8. Defendant, having orally agreed to buy goods of the value of \$200, afterwards wrote to plaintiff as follows: "You may place the gas fixtures I selected to-day. The dining-room fixtures may as well be changed over with the salesman who showed me the goods. Please put them up in fine shape, promptly as possible." The goods were not accepted or received, and defendant countermanded his order. *Held*, that the letter contained no information except by reference to the oral agreement, and did not validate it: *Sheley v. Whitman*, 67 M. 897.

9. A letter from the vendor confirming to the purchaser a sale of a cow at a certain price per pound, and enclosing an order on her keeper for delivery and weighing, was *held* a sufficient memorandum: *Sherwood v. Walker*, 66 M. 568.

10. A mere memorandum of a land sale in a receipt for money paid down is not enough to establish the contract under the statute, unless it is complete in itself and leaves nothing to rest in parol. It is not enough to state the purchase price and omit the time of payment, as there is no known usage to fix periods of payment: *Gault v. Stormont*, 51 M. 636.

11. A writing that does not specify the purchase price or the time of payment is insufficient to constitute a contract for the sale of lands under the statute of frauds, and is not aided by a subsequent letter of the party sought to be charged instructing his agent how to fill out the contract if one should be made: *Webster v. Brown*, 67 M. 323 (Oct. 20, '87).

12. A sale of land is not made out by an entry on the books of the vendors and by their receipts for purchase money where the land was not fully described and did not belong to them, and the actual owners only assented to the sale orally: *Ayres v. Gallup*, 44 M. 13.

13. A land contract which, though written, does not describe a part of the lands nor point out any method for identifying them, is fatally defective under the statute of frauds. So *held* where a joint owner of land purported, in selling it, to be acting for himself and his co-owners, but the quantity of land fell short of his representations, and a compromise agreement was made which provided that the deficiency might be made up out of lands owned solely by the vendor, but there was nothing relied upon by either party to show what particular parcel could be taken: *Alpena Lumber Co. v. Fletcher*, 48 M. 555.

14. The description of real property, in a contract for its sale, must so fit and compre-

hend it that it can be applied to the property intended and exclude all else with the aid at least of extrinsic testimony which shall neither contradict nor add to it; and a conflict in the extrinsic evidence cannot establish its insufficiency under the statute: *Eggleston v. Wagner*, 46 M. 610.

15. In correspondence relative to the purchase and sale of certain real estate the property was at first described by both parties as the "Schoolcraft store" and subsequently as "the property." *Held* a sufficient description: *Francis v. Barry*, 69 M. 811.

16. A complete and binding contract of sale may be created by letters or other writings relating to one connected transaction, if, without the aid of parol testimony, the parties, the subject-matter and the terms of the contract may be collected: *Ibid*.

17. After negotiations concerning the sale of land, for which plaintiff offered \$2,000 in cash and notes for \$500, defendant wrote that all was satisfactory; that he would take the money when defendant could raise it, and to let all stand until his return in two weeks' time. Plaintiff borrowed the money and wrote defendant that it was ready and that she wanted a deed. Defendant replied that he would give a deed, take \$2,000 and notes for the balance, and would attend to it when he returned. *Held*, that there was a sufficient contract in writing to comply with H. S. § 6181: *Ibid*.

18. A party offered in writing to sell land at a certain price, part to be secured by mortgage on the land, the valuation of the lots into which the land had been subdivided to be agreed to, and, on payment being made on account of said mortgage, lots of value equal to amount paid to be released, the valuation of each lot as agreed upon to be placed on plat. *Held*, that a mere oral acceptance of such offer within the time limited, without tender of cash payment or of any deed or mortgage executed or to be executed, did not constitute a sufficient contract under H. S. § 6181: *Wardell v. Williams*, 62 M. 50.

19. Where one party signs a memorandum offering to exchange land which he owns for land owned by another party, such memorandum cannot be made a valid contract by the oral acceptance and promise of the other party to make such exchange; such oral promise not being enforceable: *Ibid*.

20. An agreement in writing to pay higher interest *held* sufficient under the statute of frauds to charge the land, it being connected

with the mortgage: *Smith v. Graham*, 84 M. 802.

And see INTEREST, §§ 85-88.

21. Printed memoranda and signatures are sufficient (*arguendo*): *Pelton v. Ottawa Supervisors*, 52 M. 517. Printed signature to warranty binds, when adopted, as if it were written: *Grieb v. Cole*, 60 M. 397.

22. The party's signature, written by another for him at his request and in his presence, is sufficient: *Just v. Wise*, 42 M. 578; *Johnson v. Van Velsor*, 48 M. 208; *Eggleston v. Wagner*, 46 M. 610; *Coy v. Stiner*, 53 M. 42.

23. A contract of service for more than a year, signed only by the employer, is void for want of mutuality; and the other party cannot make it effective by written acceptance after the employer has refused to perform: *Wilkinson v. Heavenrich*, 58 M. 574.

24. The authority of an agent acting for the vendor in the sale of lands must be in writing; otherwise the agreement to sell is void: *Holland v. Hoyt*, 14 M. 288; *Hammond v. Hannin*, 21 M. 874; *Palmer v. Williams*, 24 M. 328; *Powell v. Conant*, 33 M. 396; *Dickinson v. Wright*, 56 M. 42.

25. It seems that the authority of the agent of the vendee in a contract for the sale of lands must be in writing: *Hammond v. Hannin*, 21 M. 874.

26. An agent whose authority rests in parol cannot bind his principal by a contract for the purchase of land: *Colegrove v. Solomon*, 34 M. 494.

27. The authority of an agent to execute a lease of land for more than one year must be in writing: *Toan v. Pline*, 60 M. 335.

28. An oral ratification by the vendee in a written contract for the sale of lands made by his agent without authority is sufficient: *Hammond v. Hannin*, 21 M. 874.

29. The admission of a parol trust in land by a defendant's answer to a bill in chancery is a sufficient written declaration of the trust to answer the requirements of the statute of frauds: *Patton v. Chamberlain*, 44 M. 5.

II. PROMISE TO PAY ANOTHER'S DEBT.¹

That a written promise to pay another's debt must show the whole terms of the contract, see *supra*, § 2.

30. An oral promise to pay another's debt is void and not enforceable where nothing appears to remove it from the operation of the statute: *Pratt v. Bates*, 40 M. 87; *Ruppe v.*

¹ H. S. § 6185, subd. 2, avoids "every special promise to answer for the debt, default or misdoings of another person," unless in writing, etc.

Edwards, 52 M. 411; *Schoch v. McLane*, 62 M. 454.

31. Such a promise made directly to the debtor is not void: *Pratt v. Bates*, 40 M. 87.

32. H. S. § 6185, subd. 2, applies only to promises that are in the nature of guaranties for some original or primary obligation to be performed by another: *Gibbs v. Blanchard*, 15 M. 292.

33. An unwritten agreement of suretyship is void: *Johnston v. Kimball*, 89 M. 187; *Bonine v. Denniston*, 41 M. 293.

34. One is not, therefore, collaterally liable as guarantor or surety where he has not made a written agreement: *Ingersoll v. Baker*, 41 M. 48.

35. The statute prevents a written guaranty to sureties against loss or liability from being shown by parol to be the contract of another than the one it purports to bind: *First National Bank v. Bennett*, 38 M. 520.

36. The purchase of goods that are to be delivered to one on the joint promise and credit of two is in legal effect, as between them and the vendor, a purchase by both, and is not within the statute: *Gibbs v. Blanchard*, 15 M. 292.

37. An oral agreement whereby partners buy out the interest of a copartner, and agree in consideration of his surrender to them of his interest to indemnify him against the partnership debts, is not within the statute: *Bonebright v. Pease*, 8 M. 318.

38. Defendant orally promised a debtor of plaintiff to pay the debt on condition that the debtor would deliver defendant a certain cow. But the plaintiff not having discharged the debtor, the promise, not being upon any consideration moving from plaintiff, was void by the statute: *Brown v. Hazen*, 11 M. 219.

39. A contractor having abandoned the building he was erecting resumed work and did certain extra labor on the promise of defendant—a third person—to pay him. But the evidence showed that he still looked to the original debtor for payment, and to defendant only as guarantor; and the promise of defendant was held within the statute: *Bresler v. Pendell*, 12 M. 224.

40. One claiming an interest in certain goods held by another who was his debtor agreed not to attach them in consideration of the oral promise by another creditor who proposed to attach that he would pay his debt. Held, that this promise to pay was within the statute and void: *Waldo v. Simonson*, 18 M. 845.

41. The oral promise of a tenant of a mortgager to pay rent to the mortgagee, to be

applied on the mortgage, is void as a promise to answer for the debt of another, if the mortgagee has not released the mortgager: *Hogsett v. Ellis*, 17 M. 351.

42. An oral promise to pay the debt of another is not exempted from the operation of the statute by reason of its consideration being the release of property to the original debtor. It remains a collateral promise still: *Corkins v. Collins*, 16 M. 478.

43. A promise to the holder of another's promissory note to pay it at maturity is one which is collateral to such note, and is within the statute: *Halsted v. Francis*, 81 M. 118.

44. Where A. orally promises B. to pay him for such goods as he may furnish C., the promise is not so taken out of the statute as to make A. liable unless B. has thereupon absolutely discharged C. from liability, and looks only to A. for payment; B. cannot hold each liable severally at his option: *Welch v. Marvin*, 36 M. 59.

45. In an action to recover the price of board and supplies furnished to laborers and employees of a subcontractor of the defendants, a verdict for defendants, with special findings that such subcontractor was never agent of defendants, that the agreements were made with him personally and not as agent, and that the debts sued for were incurred and the articles furnished solely on his credit and engagement, and not on account of defendants, shows that even if defendants had promised to pay the accounts their promise was within the statute of frauds, as a promise to pay the debt of another: *Barden v. Briscoe*, 36 M. 254.

46. An oral promise to pay for material furnished to another person on a contract made with him and not with the promisor cannot be enforced so long as the original contract remains uncanceled: *Baker v. Ingersoll*, 39 M. 158.

47. A mere oral promise to pay another's debt, without any understanding with the latter or any independent contract for the promisor's account, the original debt being kept alive, is void: *Gower v. Stuart*, 40 M. 747.

48. A parol promise by a railroad company to pay the obligations of a contractor to his laborers is void: *Bottomley v. Port Huron & N. W. R. Co.*, 44 M. 542.

49. A firm of lumber dealers made a contract with a firm of manufacturers whereby the latter were to convert the timber on certain premises into shingles and siding. The manufacturers made an independent contract with a logger to cut the timber and haul it to the mill; but as they were slow in making

payment the logger went to the dealers for payment, and they orally agreed to pay him on orders from the manufacturers. Several payments were made in this way, but when the logger tried to obtain a final settlement they refused to pay him the balance, and he brought suit on the agreement. *Held*, that it could not be maintained. There was no novation except so far as the orders were actually given; and the oral agreement was a promise to pay another's debt: *Preston v. Young*, 46 M. 108.

50. A town treasurer sold a pump on a tax levy, and the purchaser sold it to third parties, who claimed that the treasurer promised verbally, and without receiving any consideration, to be responsible for the title. *Held*, that the promise was a collateral undertaking involving no liability until the failure of the latter contract, under which a warranty of title was implied by rules of law: *Tozer's Estate*, 46 M. 299.

51. An oral promise to a merchant to guaranty payment for anything a third person should want in equipping a saw-mill, at which he was to manufacture shingles for the promisor, is within the statute and cannot support an action by the merchant against the person making the promise: *Studley v. Barth*, 54 M. 6.

52. An oral promise by A. to pay B. the amount of an account which B. holds against C.; there being no agreement between all three that A. should be substituted as the debtor and C. discharged, is void: *Pfaff v. Cummings*, 67 M. 143.

53. The business of a retail trader in debt to plaintiffs for goods bought was continued by his widow, who orally promised plaintiffs to pay her husband's debt if they would sell goods to her on credit. Credit was given. *Held*, that this was void as a promise to pay another's debt: *Ruppe v. Peterson*, 67 M. 437 (Nov. 3, '87).

54. The landlord of a liquor-dealer agreed to pay for his supplies if the latter would turn over to him two-thirds of his receipts and they should amount to enough to cover the bills. *Held* that, in the case of supplies sold to the dealer himself, and the title to which passed to him, such an agreement would be within the statute of frauds and must be in writing: *Hake v. Solomon*, 62 M. 377.

55. Contractors for the construction of a railroad gave their workmen certificates of the amount due them, which were presented to and accepted by the railroad company. Upon these certificates the plaintiffs furnished goods which they charged to the contractors. In a suit brought against the contractors to recover the price it was made a question be-

fore the jury whether the goods were furnished on the credit of the contractors, or of third persons who, according to some of the evidence, were to make advances. The jury were charged that if the goods were furnished under an arrangement with the contractors, or if they subsequently assented to the goods being charged to them — in either case they would be liable. Whether the latter branch of this charge was correct, *quere*; the court being equally divided on the question: *Farwell v. Dewey*, 12 M. 436.

56. A., who was indebted both to B. and to C., absconded, leaving property in B.'s hands, and B., on being informed that C. would attach the property, promised orally to pay C.'s claim. *Held*, that such promise was without any consideration that could inure to B., and was within the statute, whether B. appropriated the property to his own use or not: *Stewart v. Jerome*, 71 M. — (July 11, '88).

57. When the owner of negotiable paper sells it and accompanies the sale by a guaranty, his undertaking, being founded on a new consideration inuring to his own benefit, is an original one and is not within the statute: *Jones v. Palmer*, 1 D. 379; *Thomas v. Dodge*, 8 M. 51.

58. Where the guaranty of another's debt is merely incidental to a principal contract made by the guarantor himself on his own account, it is then regarded as in effect a promise to pay his own debt, and it need not, therefore, be in writing: *Huntington v. Wellington*, 12 M. 10.

59. The statute was *held* not applicable to a parol guaranty that certain notes sold by defendant to plaintiffs were good and collectible and the makers responsible; that the maker of a certain mortgage sold at the same time was responsible; that the land mortgaged was ample security, and the title perfect and unencumbered: *Ibid*.

60. The statute does not avoid an oral contract whereby one who claimed to have an interest in a patent under which he was about to organize a company to deal in rights promised another that if he would become a member, subscribe for shares, and give his promissory note therefor, the shares would cost him nothing, and as soon as the company should be organized, another man should be found to take the shares off his hands and pay him the amount of his note, and that he should be put to no expense on account of the shares and note: *Green v. Brookins*, 23 M. 48.

61. Nor does the statute apply to an understanding by which the dealings of individual partners with another firm shall be treated

as a matter of account between the two firms in their mutual dealings; purchases and sales made on the faith and in strict pursuance of it can be considered as original transactions on the part of the members of the firm charged, who may bind themselves by such an agreement if no rule of law or policy or other disability prevents: *Davis v. Dodge*, 80 M. 287.

62. A promise to become a co-signer with the promisee of a note of third persons and to pay the same at maturity is not a promise to pay the debt of another within the statute of frauds, where the purpose of giving the note is to borrow money which is to go into such promisor's hands, though the ultimate purpose was to make use of the money to aid one of the third persons who were first signers of the note, and for which such promisor was to obtain security in his own name and for his own benefit as for an advance made by him personally: *Potter v. Brown*, 85 M. 274.

63. An arrangement by which A. is to cash for B. orders drawn on B. by B.'s contractor in payment of the contractor's employees, and B. was to reimburse A. for the moneys so advanced by him, is an original and direct, not a secondary or collateral, undertaking, and is not within H. S. § 6185, subd. 2: *Comstock v. Norton*, 86 M. 277.

64. The statute of frauds does not apply to an agreement to pay the debt of a third person where, as part of the agreement, such person is discharged from his original indebtedness: *Mulcrone v. American Lumber Co.*, 55 M. 622.

65. While in many cases the test, whether a promise is within the statute of frauds, as a promise to pay the debt of another, is whether the original debtor remains liable on his undertaking and the promise is only collateral thereto, yet where the third party is himself to receive the benefit for which his promise is exchanged, it is not usually material whether the original debtor remains liable or not: *Calkins v. Chandler*, 86 M. 320.

66. The statute does not apply to a promise to make payments on the debt of another of sums which the promisor should become liable to pay to the debtor for services to be performed by the latter for him, there being a consideration moving to him which was the inducement for making the promise: *Ibid.*

67. The holders of a chattel mortgage upon a saw-mill owned by M. agreed orally with M. and with certain persons for whom M. was then engaged in sawing lumber, that, in consideration of an extension of the time of payment of the mortgage, M. should allow cus-

tomers of his to retain the sum of fifty cents per thousand feet of all lumber thereafter sawed by M. for them, and that they should pay that sum to the holders of the mortgage. Held, that the promise was valid and not within the statute of frauds; and the persons for whom the sawing was done were bound to withhold from M. such proportion of their saw-bill as they had thus agreed to pay to the holders of the mortgage, and were liable to the latter for the amount thereof whether they did or not so withhold it: *Ibid.*

68. B. hired out to V. to draw wood for D., but fearing that he would not get his pay went to D. and told him he would draw no more unless he could be assured of getting it. D. told him to go ahead and he would pay him and take it out of V. Whether this, instead of being a novation, was not void as a promise to pay another's debt, and whether *Calkins v. Chandler* (*supra*, § 67) is not vitally distinguishable from it in that the arrangement there sustained was concurred in by the intermediate party whose debt was to be paid, *quere*: *Bates v. Donnelly*, 57 M. 521.

69. A promise to pay for goods sold to the promisor but billed to a third person is not within the statute as a promise to pay another's debt: *Hake v. Solomon*, 62 M. 877.

70. A promise to the vendor to pay for such goods as may be furnished to a third person is original and not collateral, and is not within the statute as a promise to pay another's debt: *Larson v. Jensen*, 53 M. 427; *Morris v. Osterhout*, 55 M. 263.

71. A.'s promise to B. at C.'s request to pay out of a fund which should come into A.'s hands belonging to C. the amount of C.'s debt to B. is an original promise not within the statute: *Mitts v. McMorran*, 64 M. 664.

72. It seems that an oral promise to execute a paper undertaking to pay debts, in accepting a written offer of sale which stipulates that they shall be assumed, is not void under H. S. § 6185, subd. 2: *Wagner v. Egleston*, 49 M. 218.

73. A. is bound by his oral guaranty that a note offered by B. as part of the purchase price of a farm that C. is selling to B. is as good as gold or as good as money; this is not a guaranty that the note is collectible: *Taylor v. Soper*, 53 M. 96.

III. AGREEMENTS, ETC., RELATING TO LANDS.¹

As to the memorandum, etc., see *supra*, §§ 10-29.

¹ H. S. § 6179. No estate or interest in lands other than leases for a term not exceeding one year, nor any trust or power over or concerning lands, or in any manner relating thereto, shall hereafter be created, granted,

That express trusts in lands cannot be created by parol, see TRUSTS, §§ 7-22, 25.

74. Conveyances of land and interests therein must be by deed: *Enos v. Sutherland*, 11 M. 588; *Morrill v. Mackman*, 24 M. 279; *Hayes v. Livingston*, 84 M. 884; *Nims v. Sherman*, 48 M. 45; *Shaw v. Chambers*, 48 M. 855.

75. That which is evidenced by the deeds of conveyance cannot be changed on parol testimony of promises, agreements or understandings: *Hayes v. Livingston*, 84 M. 884.

76. The correction which changes a void into a good deed can only be made by conforming to the statute of frauds: *Paine v. Newell*, 66 M. 245.

77. The statute of frauds is against extending on parol testimony an ambiguous description in a mortgage, unless upon positive proofs: *Hurst v. Beaver*, 50 M. 612.

As to exclusion of parol evidence to alter contract, etc., see EVIDENCE, II, (d).

78. A grantee's title cannot be divested or revested in his grantor by destruction of the conveyance: *Gugins v. Van Gorder*, 10 M. 528; *Warren v. Tobey*, 82 M. 45; *Mette v. Feldman*, 45 M. 25; *Hyne v. Osborn*, 63 M. 285.

79. The interest which the grantor in a conveyance of land absolute in form but intended as a security has in the premises can only be transferred at law by a written instrument: *Miner v. O'Harrow*, 60 M. 91.

80. A parol sale of standing timber is void: *Russell v. Myers*, 32 M. 523; *Wetmore v. Neuberger*, 44 M. 862; *Spalding v. Archibald*, 52 M. 865.

81. Whether a parol sale of a growing crop on a valuable consideration is valid, *quere*: *Vanderkarr v. Thompson*, 19 M. 82. See REAL PROPERTY, §§ 2, 8.

82. In general an easement on the land of another cannot be created without deed: *Miller v. Reeves*, 1 M. 108. See *Day v. Walden*, 46 M. 575.

83. A privilege granted for an annual compensation to flow lands for an indefinite period is void unless in writing: *Morrill v. Mackman*, 24 M. 279.

84. A warranty or representation that real estate is not encumbered is not the creation, granting or surrendering or declaring of any

estate, interest, etc., which the statute requires to be in writing: *Huntington v. Wellington*, 12 M. 10.

85. One cannot by mere waiver part with the legal title to land. As to waiver of the right that an execution purchaser has to demand and receive a sheriff's deed after the period for redemption has expired, *quere*: *Whiting v. Butler*, 29 M. 122.

86. Title to land cannot under the statute of frauds be divested from the owner by mere oral authority, or by the mere payment of money by another on a contract for the purchase of land: *Truski v. Streseski*, 60 M. 84.

87. A division line established by mutual agreement and acquiescence and constant occupancy for more than twenty years cannot be changed without writing: *Burns v. Martin*, 45 M. 22.

88. Unless the attempt to settle a doubtful boundary is honestly made in view of a question about it, the statute of frauds will prevent mere acquiescence in the boundary from operating as an estoppel: *Cronin v. Gore*, 88 M. 881.

That oral estoppels cannot pass the title to land or to interests therein, see ESTOPPEL, §§ 66-71.

Dedications to public uses are not within the statute: See DEDICATION, § 1.

89. An unauthorized sale of land cannot be ratified except in writing or by such conduct as creates an estoppel; and it must be by a party informed of the facts: *Palmer v. Williams*, 24 M. 328.

And as to ratification of unauthorized contract, see *supra*, § 28; *infra*, §§ 202-205.

90. The statute permits leases for a year to be created by parol: *Morrill v. Mackman*, 24 M. 279. But an oral lease for a term longer than one year is void: *Huyser v. Chase*, 18 M. 98. So is a lease for more than a year, executed by an agent not authorized in writing: *Toan v. Pline*, 60 M. 885. See *infra*, § 203.

91. Though an oral lease for more than a year is void, such a lease, reserving an annual rent under which the lessee has been put in possession, will be a good lease from year to year until terminated by notice: *Morrill v. Mackman*, 24 M. 279.

92. An oral lease for a stipulated annual

assigned, surrendered or declared, unless by act or operation of law, or by a deed or conveyance in writing, subscribed by the party creating, granting, assigning, surrendering or declaring the same, or by some person thereunto by him lawfully authorized by writing.

§ 6180. The preceding section shall not be construed to affect in any manner the power of a testator in the disposition of his real estate by a last will and testament; nor to prevent any trust from arising or being extinguished by operation of law.

§ 6181. Every contract for the leasing for a longer period than one year, or for the sale of any lands, or any interest in lands, shall be void, unless the contract, or some note or memorandum thereof, be in writing, and signed by the party by whom the lease or sale is to be made, or by some person thereunto by him lawfully authorized by writing.

rent, no time being named, is a lease for a year: *Benfey v. Congdon*, 40 M. 288.

93. An agreement made in April for a year's tenancy from the 1st of May is not a lease for a term exceeding one year (H. S. § 6179) or a contract for the leasing for a longer period than one year (§ 6181), and it need not be in writing: *Tillman v. Fuller*, 13 M. 118; *Whiting v. Ohlert*, 52 M. 462.

94. Where a lessor assented to an assignment by his lessee, and agreed by parol to accept the assignee as his tenant and to look to him for the rent, this was held to be a sufficient surrender of the old lease by operation of law (H. S. § 6179): *Logan v. Anderson*, 2 D. 101.

95. A license, being merely a permission to do some act or series of acts on the licensor's land without any permanent interest in it, may be created by parol, and will protect the licensor until revoked: *Morrill v. Mackman*, 24 M. 279.

96. A parol license to cut and remove timber at a fixed price is valid until revoked. It is not a sale of an interest in lands, and is entirely outside of the statute of frauds: *Greeley v. Stilson*, 27 M. 153; *Spalding v. Archibald*, 52 M. 365.

97. Such a parol license is valid so far as executed before revocation, and cannot be revoked so as to undo what has been done or earned under it: *Ibid.*; *Wetherbee v. Green*, 22 M. 811; *Wetmore v. Neuberger*, 44 M. 362; *Sovereign v. Ortmann*, 47 M. 181.

98. Parol extensions of time to take off growing timber under a contract for its sale and removal, whether valid under the statute of frauds or not when made, are good as licenses so far as acted upon: *Haskell v. Ayres*, 85 M. 89.

99. Where standing timber was by written contract absolutely sold to be taken off in two years by the vendee, who had fully paid therefor, subsequent parol extensions not exceeding one year each were made by the vendor. As to the validity of such extensions, *quere*; at least they amounted to a revocable license: *Williams v. Flood*, 63 M. 487.

100. An oral contract for the sale of lands is void: *Dwight v. Cutler*, 3 M. 566, 578; *Bonier v. Caldwell*, 8 M. 463; *Holland v. Hoyt*, 14 M. 238; *Hogsett v. Ellis*, 17 M. 351, 364; *Palmer v. Williams*, 24 M. 328; *Scott v. Bush*, 26 M. 418; 29 M. 528; *Colgrove v. Solomon*, 34 M. 494, *Liddle v. Needham*, 39 M. 147; *Curtis v. Abbe*, 39 M. 441; *Nims v. Sherman*, 43 M. 45; *Ayres v. Gallup*, 44 M. 13; *Sutton v. Rowley*, 44 M. 112; *Jackson v. Evans*, 44 M. 510; *De Moss v. Robinson*, 46 M. 62; *Peckham*

v. Balch, 49 M. 179; *Wardell v. Williams*, 62 M. 50.

101. The statute of frauds does not require executory contracts to be under seal, but requires deeds only where trusts or powers or estates in land are created or assigned: *Enos v. Sutherland*, 11 M. 538; *Hammond v. Hannin*, 21 M. 374.

102. A written agreement for the sale of lands is void unless signed by the vendor: *Abell v. Munson*, 18 M. 306; *Cook v. Bell*, 18 M. 387; *Maynard v. Brown*, 41 M. 298.

103. An oral agreement for the purchase of lands, with a stipulation that money paid down may be retained as stipulated damages, is a single contract, and under the statute is void — the agreement for forfeiture as well as the other stipulations: *Scott v. Bush*, 26 M. 418, 29 M. 528.

104. An agreement to convey a right of way is an agreement to convey an interest in land, and must, it seems, be in writing to bind the land-owner: *Detroit, H. & I. R. Co. v. Forbes*, 30 M. 165, 175.

105. An oral agreement to devise real estate is void: *De Moss v. Robinson*, 46 M. 62.

106. A promise by an administratrix to a certain person that if the latter would attend a sale of real estate to be made by her and bid a certain amount her right of dower in the land would pass by the sale is void: *Wright v. De Groff*, 14 M. 164.

107. An agreement to execute a mortgage upon real estate is an agreement concerning interests in lands which, to be valid, must be in writing, or some note or memorandum thereof signed by the party making the promise: *Wardell v. Williams*, 62 M. 50.

108. A contract involving the transfer of real estate and assumption of debts must be written: *Wagner v. Egleston*, 49 M. 218.

109. An oral agreement to pay for services by a conveyance of lands is invalid: *Hillebrands v. Nibbelink*, 40 M. 646; *Sutton v. Rowley*, 44 M. 112.

110. The statute does not apply to a bargain between principal and agent whereby the latter is to be paid for his services in obtaining lands a certain proportion of the profits on the sale thereof: *Carr v. Leavitt*, 54 M. 540.

111. An oral agreement whereby one party was to furnish his time and experience in procuring the purchase of certain lands while the other was to furnish the money, the profits to be shared equally after a sale, there being no express agreement as to whose names should appear as grantees in the purchase deeds, is not

within the statute: *Davis v. Gerber*, 69 M. 248 (April 6, '88).

112. Agreements to pay money for services in procuring the sale of real estate are not within the statute: *Waterman R. E. Exchange v. Stephens*, 71 M. — (June 22, '88).

113. Where an oral agreement is made for the transfer of a farm, and it is also agreed that the wheat growing on the farm shall be transferred, the former agreement, being void because not in writing, avoids the latter as inseparably connected with it: *Jackson v. Evans*, 44 M. 510.

114. Where a written contract for the sale of personalty includes real estate also, the contract for personalty is not necessarily vitiated by non-compliance with the statute of frauds in that portion which relates to realty: *Stansell v. Leavitt*, 51 M. 536.

115. A parol arrangement whereby a man, who had deeded land to his wife, reserving to himself by written contract the right of possession and of repurchase within five years, bargains to give up his right under such contract, is void under the statute of frauds; and a ruling to that effect is not made erroneous by the judge's adding incidentally that "if the arrangement amounted to anything it would make the wife tenant of the husband, which was impossible," such further remark being immaterial: *Grover v. Buck*, 34 M. 520.

116. L. and N. agreed orally that if N. would deed land to L.'s son L. would give him his note for a certain sum. N. deeded the land but L. refused to pay. *Held*, that N. could not recover from him, as an oral land contract is void and furnishes no consideration for a promise, and if any undertaking to pay for the land was implied the grantee was liable upon it: *Liddle v. Needham*, 39 M. 147.

117. A bill which averred that a wife, after correspondence with her absent husband and by his consent, executed a deed of his land, leaving a blank space for his signature, and received a part of the consideration, and that the purchaser took possession, prayed that the husband might be required to complete the execution of the deed. *Held*, that the bill would not lie, even though the husband had promised to execute it when he returned. His promise being oral was within the statute of frauds and the deed was totally void. The bill was dismissed without prejudice to the purchaser's right to resort to other remedies: *Curtis v. Abbe*, 39 M. 441.

118. An agreement to surrender or release an equitable estate in fee-simple must be in writing signed by the party transferring or releasing it, and if oral it cannot be shown to

alter a written contract: *McEwan v. Ortman*, 34 M. 325.

119. The legal title held by a mortgager is not conveyed by oral agreement and delivery of possession of the land: *Nims v. Sherman*, 43 M. 45.

120. A contract to procure the conveyance of an equity of redemption held by a third person is, within the statute, a contract for the sale of an interest in lands, and is void if not in writing: *Rawdon v. Dodge*, 40 M. 697.

121. An agreement by one person to purchase an interest in lands for another is void: *Raub v. Smith*, 61 M. 543.

122. An oral agreement between a son and his father that if the son will pay the father's debts, and obtain the discharge of mortgages upon his property, the father shall convey to him his real estate, is void under the statute: *Kelly v. Kelly*, 54 M. 30.

123. An oral agreement to form a copartnership for the purchase of timber land from which the manufacture and sale of lumber is to be carried on is within the statute: *Raub v. Smith*, 61 M. 543.

124. An agreement whereby plaintiff is to purchase land whereon a plaster-bed is located, for himself and defendant, the title to be in the names of both parties, and whereby both are to form a partnership to work the plaster, is within the statute: *Brosnan v. McKee*, 63 M. 454.

125. After a vendor in a land contract has put performance out of his power by conveying to a third person, an oral agreement to have the land conveyed to the vendor and then reconveyed to the original vendee on his paying up all the purchase money is within the statute of frauds, and cannot operate as a waiver of such vendee's right to treat the contract as rescinded and to recover the money paid: *Weaver v. Aitcheson*, 65 M. 285.

126. A house built by one who holds lands under a contract of purchase, being part of the realty, an oral agreement that it may be levied upon by virtue of an execution against chattels is void: *Hogsett v. Ellis*, 17 M. 351.

127. A. let B. take a yoke of oxen to use in clearing land for A.'s wife, and with the understanding that B. should own the oxen when he had done \$100 worth of clearing. *Held*, that this arrangement was not within the statute: *Sutherland v. Carter*, 52 M. 151.

128. A written contract was supplemented by an oral agreement whereby one of the parties was to advance money and use it in buying an interest in land for the other. *Held*, that under the statute of frauds the arrangement had no force, and that as the obligation

to buy could not bind the other party he could not be charged with the cost of executing such obligation: *Wetmore v. Neuberger*, 44 M. 862.

129. A parol agreement reserving crops growing on land contracted in writing to be sold is void: *Vanderkarr v. Thompson*, 19 M. 82.

130. A parol agreement for the reservation or exception of a barn or sheds from the operation of a deed is void under the statute of frauds, and the question whether an undertaking sued on is of that character is not to be determined by the name which the parties or their witnesses give it, but by the nature and substance of the transaction: *Detroit, H. & I. R. Co. v. Forbes*, 80 M. 165.

131. An undertaking to remove a barn and sheds situated upon a forty-acre tract in consideration of the giving of a deed of land lying fifty feet on each side of a proposed railroad route where it should cross such tract cannot be construed as an exception or reservation of the barn and sheds from the operation of the deed, in the absence of any showing of the actual location of the route of the railroad, or that it was so located as to include the ground where the barn and sheds stood, nor is such undertaking required to be in writing: *Ibid.*

132. A party who, by promising to assign a tax-purchase certificate to the owner of the land, has induced the latter not to exercise his right to redeem, cannot, after the time for redemption has expired, shield himself behind the statute: *Laing v. McKee*, 18 M. 124.

133. An agreement to surrender or release a parcel of land, mentioned in a contemporaneous contract, is not a defeasance but an agreement for a resale, and is within the statute: *McEwan v. Ortman*, 84 M. 325.

134. Under the statute of frauds, which requires all contracts for the sale of lands to be in writing and avoids them if not written and signed by the vendor, parol alterations cannot be made extending the time therein expressly fixed for performance: *Abell v. Munson*, 18 M. 306; *Cook v. Bell*, 18 M. 387.

135. The time limited for acceptance in a written offer to sell land cannot be extended by parol: *Wardell v. Williams*, 62 M. 50.

136. Nor can any oral stipulation inconsistent with the terms of a contract for the sale of lands be imported into it; e. g., one to release or surrender a parcel mentioned therein: *McEwan v. Ortman*, 84 M. 325.

IV. AGREEMENTS RELATING TO THE SALE OF GOODS AND CHATTELS.¹

As to the memorandum, see *supra*, §§ 6-9.

(a) *In general.*

137. The terms "goods, wares and merchandise," in H. S. §§ 6186, 6187, embrace animate as well as inanimate property: *Weston v. McDowell*, 20 M. 853. But no writing is necessary where animals sold are delivered to the vendee: *Dean v. Adams*, 44 M. 117.

138. An agreement to pay compensation to an agent for the sale of personal property, graduated by the price obtained from a third person on such sale, is not an agreement for the sale of chattels and is not required by H. S. § 6186 to be in writing: *Hamilton v. Frothingham*, 59 M. 258.

139. The same is true of an agreement to procure a purchaser of shares of stock conditioned on the promisee's subscribing therefor: *Green v. Brookins*, 28 M. 48.

140. A contract to paint a portrait is not a sale of chattels and is not required by H. S. § 6186 to be in writing though the price is more than \$50: *Turner v. Mason*, 65 M. 663. So with a tailor's contract to make a coat: *Rasch v. Bissell*, 52 M. 455.

141. The purchase of goods which are to be delivered to one on the joint promise and credit of two is in legal effect, as between them and the vendor, a purchase by both, and not within the statute: *Gibbs v. Blanchard*, 15 M. 293.

142. An agreement by a debtor to sell and deliver certain property to his creditor for a price not exceeding \$50, and to be credited therefor on the latter's books, which credit was immediately given, but without the vendor's knowledge, there being no delivery or payment of earnest money, nor any memorandum of sale signed by the vendor, held valid: *Webster v. Bailey*, 40 M. 641.

143. There can be no recovery on an oral sale of goods exceeding \$50 in value unless something has been paid or some part of the goods delivered: *Dooley v. Eilbert*, 47 M. 615.

144. Where goods exceeding \$50 in price are ordered, the vendee is not bound unless there is an acceptance in writing or some act done on the faith of the order: *Goodspeed v. Wiard Plow Co.*, 45 M. 322.

145. An oral purchase by sample with a parol order for shipment do not constitute such a setting apart of the identical goods

¹ H. S. § 6186. No contract for the sale of any goods, wares or merchandise for the price of fifty dollars or more shall be valid, unless the purchaser shall accept and receive part of the goods sold, or shall give something in earnest to bind the bargain or in part payment, or unless some note or memorandum in writing of the bargain shall be made, and signed by the party to be charged thereby or by some person thereunto by him lawfully authorized.

purchased as to take the case out of the statute, and prior to acceptance by the vendee they remain the vendor's property, who may retake the goods where the vendee dies while they are in transit to him: *Smith v. Brennan*, 62 M. 349.

146. Liquors worth \$80 were sold on oral order and were shipped to the vendee by rail, and while in the possession of the railroad company, before acceptance by or delivery to the vendee, were seized on execution against him. *Held*, that the sale was within H. S. § 6186, and that the vendor could bring trover against the execution purchaser: *Winner v. Williams*, 62 M. 363.

147. An oral contract for the sale of iron ore worth more than \$50 is within the statute of frauds if it is made between residents of Michigan, relates to property here that is to be selected, weighed and delivered here, and if it is to be performed here; it makes no difference where vendor's agents or servants reside: *Foster v. Lumberman's Mining Co.*, 68 M. 188 (Jan. 12, '88).

(b) *Earnest-money.*

148. Where earnest-money is paid to an agent acting for several interests it will be regarded as belonging ratably to all, and will therefore bring all within the protection of the statute, which validates sales without delivery where earnest-money is given: *Burhans v. Corey*, 17 M. 282.

(c) *Delivery and acceptance.*

149. If an oral order is followed by delivery and acceptance the sale is completed and the case is taken out of the statute. So *held* where the vendee telegraphed cancelling the order, but upon receiving an answer that the goods had been shipped accepted them: *Sullivan v. Sullivan*, 70 M. 588.

150. A party contracted to sell a quantity of wood, part of which was piled in his yard and the rest whereof was afterwards hauled and piled by him. Then the vendee took possession of the wood and hired a man to repile it. *Held*, a sufficient delivery to take the case out of the statute: *Richards v. Burroughs*, 62 M. 117.

151. The delivery required by the statute where no payment is made or earnest-money given is not dispensed with by an agreement at the time that the vendee should take the property where it then was and the vendor not be troubled to make any delivery: *Alderton v. Buchoz*, 3 M. 322. Inquiry about the

property by the vendee afterwards is not an exercise of ownership over it such as will take the case out of the operation of the statute: *Ibid*.

152. In an oral sale of ponderous articles incapable of actual delivery, if the purchaser accepts them where they are, and exercises acts of control and ownership over them, it will satisfy the statute; but where it does not appear that the articles (as here, mill-irons) are ponderous, or were so regarded by the parties, that fact cannot be assumed without proof: *Ibid*.

153. Delivery and acceptance of part of the goods purchased take the case out of the statute as to the whole: *Ibid*; *Garfield v. Paris*, 96 U. S. 557.

154. Acceptance sufficient to satisfy the statute may be constructive; so *held* where spirituous liquors were sold by parol, vendor agreeing to furnish certain copyrighted labels which added to the value of the liquors and entered into the price and were accepted by the vendee: *Garfield v. Paris*, 96 U. S. 557.

155. Acceptance of merchandise under a contract that is invalid by the statute of frauds cannot be implied from a tender of such merchandise made on one side without referring to any contract, and from a refusal on the other to take it then for want of time to attend to it, with a promise, however, to send for it when it should be needed: *Scotten v. Sutter*, 37 M. 526.

156. An oral purchase by two vendees of goods worth more than \$50 is not taken out of the statute as to both by a subsequent acceptance of the goods by one without the other's knowledge or assent: *Chamberlain v. Dow*, 10 M. 819.

157. Whether receipt of goods by carrier selected by vendees is such an acceptance by them as satisfies the statute in absence of writing or earnest-money, *quere*: *Barker v. Cleveland*, 19 M. 280. It seems that acceptance by carrier employed by vendee is effectual where the latter reserves no right of personal inspection or decision: *Grimes v. Van Vechten*, 20 M. 410.

158. But reception and assumption of custody by a carrier who is to take the goods to vendee subject to acceptance by him does not complete an oral sale so as to take it out of the statute: *Rindskopf v. De Ruyter*, 39 M. 1.

159. And where an oral sale would otherwise be void and there is a delivery of the goods in pursuance of the same contract to a carrier who has no separate and independent authority from the vendee to receive them, reception by the carrier does not amount to an

acceptance by the vendee so as to bar the statute: *Grimes v. Van Vechten*, 20 M. 410; *Webber v. Howe*, 36 M. 150; *Smith v. Brennan*, 62 M. 349.

160. The administrator of a deceased vendee cannot accept goods orally ordered by his intestate and thus take the case out of the statute: *Smith v. Brennan*, 62 M. 349.

V. AGREEMENTS NOT TO BE PERFORMED WITHIN ONE YEAR.¹

As to the memorandum, see *supra*, §§ 3-5, 23.

161. One who counts on a contract not to be performed within a year from the time of its making must show that the contract, or a memorandum of it, was reduced to writing and signed by the defendant or on his behalf: *Palmer v. Marquette & Pacific Rolling Mill Co.*, 32 M. 274.

162. An executed oral agreement for the sale of the good-will of one's professional practice is not void under the statute as one not to be performed within a year. When the practice is transferred, paid for and entered upon, the parties have done what they could to make the transaction complete, even if the purchaser does not, within the year, reap all the benefits he expects from it: *Doty v. Martin*, 32 M. 462.

163. A contract that in consideration of the plaintiff's procuring the defendant to be admitted as a partner, having a certain interest in a joint venture and in the business to be carried on and the profits to be made by it, the latter would at the end of three years pay whatever the business as then developed would show that interest to have been fairly worth when the contract was entered into, is within H. S. § 6185, subd. 2: *Whipple v. Parker*, 29 M. 369.

164. A contract whereby A., fifteen years old, is to work for B. until he, A., comes of age, B. to supply schooling in the winter and clothing, and at the end of the service certain articles of personalty, is void under the statute: *Burroughs v. Morse*, 48 M. 520.

165. A contract to cut, haul and deliver afloat in a certain stream all the logs that can be cut from specified lands "at the rate of two million feet, board measure, every winter, and as much more as the owners of said timber shall desire," is not one by the terms

whereof performance cannot be made within one year; and an agreement extending the time of the annual cutting from year to year need not be in writing: *Barton v. Gray*, 48 M. 164, 57 M. 622.

166. An agreement for a lease is performed by making the lease; hence, an oral agreement to make a lease within a year for the term of a year to commence on a future day is not within the statute: *Tillman v. Fuller*, 18 M. 113; *Whiting v. Ohlert*, 52 M. 462.

167. The statute does not apply to contracts the terms of which are such as to leave it uncertain whether they may or may not be performed with a year: *Barton v. Gray*, 57 M. 623.

168. Where one promised to pay for services rendered, improvements made, etc., out of his estate after his death, the promise was not within the statute, for at the time of its making it was possible that it might be performed within a year: *Sword v. Keith*, 31 M. 247.

169. An oral agreement between father and son that the latter shall support his parents during their lives is not one that by its terms may not be performed within one year: *Carr v. McCarthy*, 70 M. 258.

170. An unwritten contract to be performed within a year is not made void, under the statute, by parol extension from time to time for periods of less than a year: *Donovan v. Richmond*, 61 M. 467.

VI. AGREEMENTS IN CONSIDERATION OF MARRIAGE.²

171. An ante-nuptial parol agreement to settle property on the wife is void: *Wood v. Savage*, 2 D. 316.

172. One's parol promise to give his daughter certain lands upon her marriage is doubly within the statute of frauds because it concerns land and because it is in consideration of marriage; nor does the marriage take it out of the statute: *Welch v. Whelpley*, 62 M. 15.

VII. REPRESENTATIONS AS TO CREDIT, ETC.³

173. Representations concerning the credit of a corporation are within H. S. § 6188, which

¹ H. S. § 6185, subd. 1, avoids "every agreement that, by its terms, is not to be performed within one year from the making thereof," unless in writing, etc.

² H. S. § 6185, subd. 3, avoids "every agreement, promise or undertaking made upon consideration of marriage, except mutual promise to marry," unless in writing, etc.

³ H. S. § 6188. No action shall be brought to charge any person upon or by reason of any favorable representation or assurance made concerning the character, conduct, credit, ability, trade or dealings of any other person, unless such representation or assurance be made in writing and signed by the party to be charged thereby, or by some person thereunto by him lawfully authorized.

prohibits actions on oral representations concerning another's character, ability, trade or dealings: *Bush v. Sprague*, 51 M. 41.

174. But that section does not apply to a case in which defendants are charged with conspiring to form a corporation for the purpose of defrauding plaintiff and with carrying out their fraudulent purposes by a course of dealing tending to make him believe the alleged corporation to be of good credit: *Ibid.*

175. Nor to the representations made by the owner of corporate stock (which he was seeking to sell to plaintiff) as to the business of the corporation and the value of its stock: *French v. Fitch*, 67 M. 492.

176. H. S. § 6188 is confined to cases where the representations form no part of a contract: *Huntington v. Wellington*, 12 M. 10.

177. H. S. § 6188 does not apply where the holder of a note seeks to recover against an indorser whose signature was obtained by means of his own false and fraudulent representations as to the maker's solvency: *Lenheim v. Fay*, 27 M. 70.

178. Nor where a person induced a dealer to supply brick to contractors engaged in building houses for him, he falsely representing — orally — to the dealer that he had sufficient money coming to them under his control, and that the dealer should be paid first: *Daniel v. Robinson*, 66 M. 296, 299.

VIII. MISCELLANEOUS CASES.

179. The statute does not require a vendee's agreement to pay purchase money to be in writing: *Holland v. Hoyt*, 14 M. 238; *Scott v. Bush*, 26 M. 418; *Burke v. Wüßer*, 42 M. 327; *Huff v. Hall*, 56 M. 456.

180. Mortgages, being chattel interests, may be transferred or extinguished without writing: *Cooper v. Ulmann*, W. 251; *Dougherty v. Randall*, 3 M. 581; *Martin v. McReynolds*, 6 M. 70; *Pease v. Warren*, 29 M. 9; *Nims v. Sherman*, 43 M. 45.

181. The statute of frauds concerning trusts does not apply to trusts in personality, which may, therefore, be evidenced by parol: *Catlin v. Birchard*, 18 M. 110; *Bowker v. Johnson*, 17 M. 42; *Bostwick v. Mahaffey*, 48 M. 342; *Calder v. Moran*, 49 M. 14.

182. An interest that rests in parol may be extinguished by parol: *First National Bank v. McAllister*, 46 M. 397.

183. And it seems that, against the legal owner of land, equities may be extinguished otherwise than by conveyance under the statute of frauds: *Munch v. Shabel*, 37 M. 166.

184. An assignment of a laborer's claims

against a company that has employed him need not be in writing: *Donovan v. Halsey Fire Engine Co.*, 58 M. 38.

185. Nor need an agreement between attorney and client that the former shall prosecute the latter's suit and pay all costs, receiving half the recovery if successful: *Willey v. Crane*, 69 M. 17.

186. A parol acceptance of a draft or bill of exchange is void under H. S. § 1583: *Elliott v. Miller*, 8 M. 132; *Pfaff v. Cummings*, 67 M. 148.

187. An indorser's consent to the alteration of paper need not be in writing: *Stewart v. First National Bank*, 40 M. 348.

188. An account stated need not be in writing: *Sperry v. Moore's Estate*, 42 M. 353; *Watkins v. Ford*, 69 M. 357.

After discharge in bankruptcy a new promise to pay or an acknowledgment of debt need not be in writing: See BANKRUPTCY, § 28.

IX. PART PERFORMANCE; EXECUTED OR RATIFIED CONTRACTS.

As to what is sufficient part performance to warrant decree of SPECIFIC PERFORMANCE, see that title, I, (b), 8.

189. The statute will not bear any exception that cannot rest on the substantial equities of a partly-performed contract: *Baker v. Johnston*, 21 M. 319, 348.

190. An oral contract for the sale of land is made valid by part performance: *Scott v. Bush*, 26 M. 418; *Davis v. Strobridge*, 44 M. 157.

191. The effect of part performance on a void contract is not to make it enforceable at law, but to raise such equities against whichever party permits the other to rely on it as may justify a court of equity in enforcing it specifically against him: *Dickinson v. Wright*, 56 M. 42.

192. The grantor of land who had conveyed it by deed absolute in form but intended as a security, having had an offer from a third person for the land, informed B., the grantee, thereof, who told him he would like to take the land himself for the price, and it was orally agreed B. should have it, and possession was given up to him accordingly. B. subsequently sold the land for a larger price to the third person. Held, that the parol contract had been carried out by performance; that B.'s promise was based on a sufficient consideration, and that he was liable for the price: *Miner v. O'Harrow*, 60 M. 91.

193. Part payment of an existing debt in

money, under an arrangement to accept payment partly in money and partly in land held by a third person, and in the debtor's discharge of a mortgage he held against the land in question, cannot operate as such a part performance of an oral contract to accept the land as payment as to take the case out of the statute; such part payment was but payment of so much of an existing debt, and the discharge of the mortgage was not a fact of part performance at all, but merely a preparatory act to put the vendor in condition to tender performance: *Colgrove v. Solomon*, 84 M. 494.

194. In a particular case the partial execution of an oral agreement varying the terms of a lease of water-power was held to take the whole agreement out of the statute: *Norris v. Showerman*, 2 D. 16.

195. Whether a mere oral promise of such a character that by the statute it would have to be in writing to be of any force constitutes of itself a sufficient consideration for another promise to render the latter binding at the time it is made, *quere*. Where such oral promise has been fully performed within a reasonable time, and before the promise in consideration of which it was made has been retracted, and such performance has been accepted, the defendant's promise becomes binding and can be enforced: *Detroit, H. & I. R. Co. v. Forbes*, 80 M. 165.

196. An oral agreement is valid so far as it has been carried out, even though when made it referred for its terms to another contract not then signed and not in fact signed afterwards, and therefore invalid. Nor can such an agreement be so revoked as to undo what has been earned under it: *Sovereign v. Ortman*, 47 M. 181.

197. A logging contract with the owners of certain pine lands provided that they were to sell the other parties, on certain terms, all the white pine the latter should cut from the lands before a certain date. The signing of the contract was delayed, but meanwhile the parties made an oral agreement that the purchasers should proceed with their lumbering. The original contract was not signed after all, and the owners of the land replevied the logs which the other parties had got out and forwarded to buyers, whereupon the purchasers sued for damages. Held, that the plaintiffs were entitled to all the interests which they had earned under their parol agreement so far as they had executed it, whether it made them agents or equitable owners, and that they could recover their agreed compensation or the money had and received by defendants to their use, or such damages as might appear,

according to the nature of the agreement; the case was one for the jury: *Ibid*.

198. The owner of land made an oral agreement with defendant to convey to him the land subject to a mortgage, defendant agreeing to pay the same and the mortgage notes, and to hold the vendor harmless. Subsequently the vendor quitclaimed the land to defendant's sons at the request of defendant, who renewed his agreement to pay the notes and mortgage. Held, that the conveyance to the sons was equivalent to a sale to defendant, and the conveyance, delivery and acceptance of possession took the case out of the statute: *Waldron v. Laird*, 65 M. 237.

199. A parol trust in lands, when executed or recognized, is not to be disturbed: *Barber v. Milner*, 48 M. 248; *Patton v. Chamberlain*, 44 M. 5.

200. In trover by an administrator against a son of the deceased, evidence of a parol agreement faithfully executed by the defendant who had made it with the deceased and his wife, and by which the defendant was to remain on the farm, manage affairs and support his parents during their lives in consideration of what there was of the property, was held admissible, notwithstanding the objection that it showed an oral arrangement required by the statute of frauds to be in writing: *Hill v. Chambers*, 80 M. 422.

201. If the parties to a sale that would be void under the statute of frauds choose to treat it as valid, it will be so as to them, and may become effectual for all purposes: *Spalding v. Archibald*, 52 M. 865.

202. The absence of proof of written authority to an agent to execute a land contract is unimportant where there is full proof of ratification by both parties by demand and receipt of payment and by possession and improvement: *Hanchett v. McQueen*, 32 M. 22; *Bailey v. Cornell*, 66 M. 107.

203. Failure to sign a written lease does not destroy the effect of a previous arrangement that had been practically executed in part by an exchange of possession which took it out of the statute of frauds: *Switzer v. Gardner*, 41 M. 164.

204. Leases for more than one year are invalid if executed by an agent not authorized in writing; but when the lessee has been put in possession and has enjoyed the premises for a full year, the executed agreement is good for that period at least, and the lessee is liable for the accrued rent: *Toan v. Pline*, 60 M. 385.

205. Where the officers of an association have given a written agreement whereby the

recipient is declared entitled to a specified portion of certain described land held by the association under a lease, and this agreement is ratified and confirmed on the books of the association, the objection that a subsequent oral agreement to perfect the title and give him the interest was void under the statute of frauds was considered unimportant where this agreement also was ratified, confirmed and entered on the books, especially as the title was afterwards perfected, which fact in itself would have left the original agreement, if valid, sufficient to assure the same interest: *Compo v. Jackson Iron Co.*, 49 M. 39.

X. PLEADING AND EVIDENCE; EFFECT OF THE STATUTE.

206. A bill to enforce an agreement involving an interest in lands is demurrable if it appears on its face that the agreement is void under the statute of frauds; and if not appearing, it is so involved in the case as to prevent recovery without proof or waiver of proof of a statutory right. But the defence may be lost by not insisting on it or bringing it before the court: *Eveland v. Stephenson*, 45 M. 394.

207. A declaration on a guaranty within the purview of the statute of frauds need not aver that the guaranty was in writing: *Dayton v. Williams*, 2 D. 81.

208. Nor need it aver that the undertaking guarantied, though that also was within the purview of the statute, was made with the formalities which the statute requires: *Ibid.*

209. Goods being found by two jointly in the St. Clair river, it was agreed that defendant should sell the same and divide the proceeds. Suit being brought upon this agreement, defendant claimed that under the statute relative to lost goods no sale could lawfully have been made within a year, and the agreement, which was not in writing, was therefore void. *Held* that, to render the statute applicable, he should have shown that the finding was within the state: *Cummings v. Stone*, 18 M. 70.

210. The sufficiency, under the statute, of a description of land in a contract for its sale is a question which arises on the face of the paper; and, it seems, should be settled by inspection thereof before the introduction of extrinsic evidence to connect the contract with any particular premises: *Eggleston v. Wagner*, 46 M. 610.

211. The admission of oral evidence to prove an agreement for the transfer of an interest in lands is none the less error because

the agreement itself was void: *Rawdon v. Dodge*, 40 M. 697.

212. A parol agreement that would be void under the statute of frauds may nevertheless be put in evidence in an action on it to the extent to which the parties have carried it out, since they have so far agreed to be governed by its terms: *Fuller v. Rice*, 52 M. 435.

213. A contract void under the statute of frauds is a mere nullity, and cannot be used or be binding for any purpose whatever: *Scott v. Bush*, 26 M. 418; *Lentz v. Flint & P. M. R. Co.*, 53 M. 444; *Raub v. Smith*, 61 M. 548; *Wardell v. Williams*, 62 M. 50.

214. An agreement void under the statute because not written cannot be considered in measuring damages or for any other purpose: *Hillebrands v. Nibbelink*, 40 M. 646; *Sutton v. Rowley*, 44 M. 112.

215. A contract void under the statute of frauds can support no rights, legal or equitable: *Kelly v. Kelly*, 54 M. 30.

216. For the breach of a contract void under the statute there can in law be no damages, stipulated or otherwise: *Scott v. Bush*, 29 M. 523.

217. A promise void under the statute of frauds cannot be enforced as an estoppel where the party has not been misled as to the facts. Accordingly, where an administratrix promised one that if the latter would attend a sale of real estate to be made by her and bid a certain amount her right of dower in the land should pass by the sale, it was *held* that she was not thereby estopped from claiming it: *Wright v. De Groff*, 14 M. 164.

218. A contract that is within the statute and void because not in writing cannot be recognized as creating a moral obligation which in its turn should be held a sufficient consideration to take any part of the contract out of the statute: *Scott v. Bush*, 29 M. 523.

219. An oral promise to pay the debt of another, being void under the statute of frauds, is not a valid consideration for a subsequent promise in writing: *Hall v. Soule*, 11 M. 494.

220. A promise made in consideration of an oral executory contract to deed land is void for want of consideration: *Liddle v. Needham*, 39 M. 147.

221. It seems that, when the only consideration for defendant's promise is plaintiff's promise or undertaking, which is invalid because merely oral, such consideration is insufficient: *Detroit, H. & I. R. Co. v. Forbes*, 80 M. 165, 176.

222. Payment by A. under his oral contract with B. to pay the latter's debts and obtain discharge of mortgages upon his land, B.

to convey his real estate to A., cannot create an equitable lien upon the land, though perhaps recoverable in *assumpsit*: *Kelly v. Kelly*, 54 M. 90.

223. An oral bargain that is not a valid contract under the statute needs no rescission, being utterly void: *Colgrove v. Solomon*, 34 M. 494.

224. An oral contract by two persons jointly to purchase articles within the statute cannot be made effectual against both by the subsequent ratification by one of them, the contract being wholly void: *Chamberlain v. Dou*, 10 M. 819.

225. A contract void under the statute is wholly, not partially, void, and cannot furnish authority to a third person to ratify it: *Grimes v. Van Vechten*, 20 M. 410.

226. Nor can one who has not sufficient authority to bind his principal under the statute of frauds by a contract for the sale of lands accomplish the same result by way of estoppel: *Holland v. Hoyt*, 14 M. 288.

227. The statute does not prevent one who has surrendered his contract from recovering the consideration he has paid: *Sullivan v. Dunham*, 42 M. 518.

228. A vendee of land under oral contract can refuse to carry out his contract—where nothing has been done to take the case out of the statute—and can recover back what he has paid: *Scott v. Bush*, 26 M. 418, 29 M. 523; *Nims v. Sherman*, 43 M. 45; *Kelly v. Kelly*, 54 M. 80; *Wright v. Dickinson*, 67 M. 580 (Nov. 10, '87).

229. Money advanced on an oral agreement to purchase lands, to be held as stipulated damages on default in the purchaser, and otherwise to be applied as part of the purchase money, may be recovered back, even though the vendor offers to convey, where no possession has been given or act done so as to take the case out of the statute: *Scott v. Bush*, 26 M. 418, 29 M. 523.

230. Even though the contract stipulates for such retention or compensation for vendor's expenses and trouble: *Scott v. Bush*, 29 M. 523.

231. Nor can money so advanced be retained on the claim that there was a sufficient consideration for the payment growing out of collateral matter which in effect was but part of the void contract itself: *Ibid*.

232. C. bought land of S., but the sale was cancelled and C. reconveyed to S., who, however, retained the money paid; but an oral agreement was made that S. should pay back partly in money and partly by means of land

owned by A. whereon S. held a mortgage, and which A. was to convey to C. S. made the part payment and discharged his mortgage, but C. refused to accept a deed of the land. Held, that C. could recover the rest of the original payment made by her: *Colgrove v. Solomon*, 34 M. 494.

233. One who goes into possession under an oral contract, makes payments and cuts timber cannot maintain an action to recover back such payments: *Cilley v. Burkholder*, 41 M. 749.

234. The statute of frauds does not preclude recovery for the price of lands actually conveyed, whether the agreement for the price is written or oral: *Holland v. Hoyt*, 14 M. 288.

235. In an action on the common counts to recover back the value of a consideration paid, received and appropriated under a contract void under the statute of frauds, held, that the contract might be referred to to show the equitable circumstances under which the consideration was received in order to reduce the value, but that it could not be used by the plaintiff to aid him in recovering beyond the real value of such consideration: *Whipple v. Parker*, 29 M. 369.

236. The statute does not preclude a suit by a principal against his agent for money equitably due the former in consequence of a fraudulent transaction whereby the agent bought lands of his principal and sold them at a higher price: *Moore v. Mandlebaum*, 8 M. 433.

237. In an action for fraud in the sale of lands, perpetrated by pointing out and pretending to sell to one ignorant of the manner of describing lands in deeds, and unable to read, a parcel of valuable land, and then fraudulently deeding in lieu thereof a different and worthless parcel, evidence of the fraudulent transaction cannot be excluded on the ground that the agreement to sell the land, not being in writing, was void under the statute of frauds: *Ochsenkehl v. Jeffers*, 32 M. 482.

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SURETYSHIP.

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I. LIABILITY OF SURETY.

(a) *In general.*

1. The contract or undertaking of a surety is a contract by one person to be answerable for the payment of some debt or the performance of some act or duty in case of the failure of some other person who is himself primarily responsible for such payment or performance: *Roberts v. Hawkins*, 70 M. 566.

2. A surety is one who, being liable to pay a debt or perform an obligation, is entitled, if it is enforced against him, to be indemnified by some other person who ought himself to have paid or performed before the surety was compelled to do so: *Smith v. Sheldon*, 35 M. 42.

3. It is immaterial in what form the relation of principal and surety is established, or whether the creditor is or is not contracted with in the two capacities; the relation is fixed by the arrangement and equities between the debtor or obligors, and may or may not be known to the creditor: *Ibid*.

4. The relation of principal and surety grows out of the consent of the parties, and the principles that belong to it in regard to the recovery over do not necessarily apply to a case where the relation does not arise from consent, but is caused by a positive wrong committed by one against another; e. g., where an officer without intentional wrong on his part has been induced, by means of fraudulent representation, to seize a third person's property, for which seizure he has been held responsible: *Kenyon v. Woodruff*, 33 M. 310.

5. The undertaking of a surety, though it may be contemporaneous, is not joint with that of the principal debtor, but is merely accessory and collateral to it: *Farmers', etc. Bank v. Kingsley*, 2 D. 379.

6. A contract of suretyship need not be contemporaneous with the principal obligation: *Miller v. Finley*, 26 M. 249.

7. One who indorses a note for the maker's accommodation and without consideration is a surety of the maker: *Farmers', etc. Bank v. Kingsley*, 2 D. 379.

8. Retiring partners whose copartner has agreed to pay the firm debts are in the position of sureties, and are discharged from their liability to a creditor of the firm who, with knowledge of the facts, disregards their rights as sureties in dealing with the partner so assuming such debts: *Smith v. Sheldon*, 35 M. 42; *Johnson v. Emerick*, 70 M. 215 (May 11, '88).

9. The agreement of a surety is not binding where, without his knowledge, the bargain between the primary parties out of which it springs is contaminated by positive illegalities; nor does his equity at all depend upon the question whether the principals could demand the like relief: *Denison v. Gibson*, 24 M. 187.

10. An extension of credit will uphold a contract of suretyship: *Lee v. Wisner*, 38 M. 62.

11. If sureties when they sign a bond make it a condition that it shall not be delivered until executed by others as sureties, whose names are therein inserted, and it is delivered to the principal or his agent on this condition, it seems that until performance of the condition there can be no legal or effective delivery: *People v. Brown*, 2 D. 9.

12. Where a bond for costs was expressly

worded as though the suitor had become obligor jointly with others who signed it in his behalf upon the condition that it should not be used until his signature was obtained, the sureties are not liable upon a delivery without his signature; nor does the fact that he was liable independently and at all events alter the case: *Hall v. Parker*, 87 M. 590.

13. An official bond of a township treasurer was drawn up in the usual manner, setting forth the officer as principal and others as sureties, and it was accepted by the supervisors without the sureties' knowledge or consent that it was not to be signed by the principal. *Held*, that the sureties were not bound: *Johnston v. Kimball*, 89 M. 187.

14. The sole liability of sureties upon a bond which names their principal as an obligor, but which he has not signed, cannot be established without positive proof that they delivered the bond to be operative against themselves alone: *Ibid.*; *Hall v. Parker*, 89 M. 287.

15. Where an appeal bond names certain persons as sureties, it must be presumed that each one contemplates that the rest will join in its execution; and one who sues on the bond has the burden of explaining the omission of any one to do so: *Woodin v. Durfee*, 46 M. 424.

16. Where a replevin bond contains the name of the plaintiff as a principal in the body of it, but is not signed by him, the presumptions are against its validity (see *Green v. Kindy*, 43 M. 279); but it is valid as against the surety if shown to have been delivered by him with the intention that it should be binding without the principal's signature: *Cahill's Appeal*, 48 M. 616.

17. A surety signed a bond for the release of attached property on the understanding or condition that a certain person — whose name was inserted — should sign as co-surety; and with notice of this the bond was accepted, the co-surety's name, however, being stricken out, and in its place was put the name of another person who actually signed as surety unknown to the first surety. *Held*, that the first surety was released: *Hessell v. Johnson*, 63 M. 623.

18. A surety cannot escape liability on a bond as having signed only on condition that a specified co-surety should be procured before it was used, if he had delivered it to the principal to be completed with nothing on its face to show that such a condition was imposed: *Gibbs v. Johnson*, 63 M. 671.

19. Where two bonds were given at the same time to release attached property, the fact that in the body of one bond names of two sureties were written had no tendency to

show that the attorney of the attaching creditors, who drew both bonds, knew of the condition that a particular person should be procured as co-surety in the other bond: *Ibid.*

20. That failure to procure a freeholder as co-surety does not release surety on bond for release in attachment, see *Ibid.*

21. Where a bond required to be filed in a public office has been signed in blank by a surety and entrusted to the principal or other person to be filled out with the name of a specified person as co-surety, it binds the surety notwithstanding non-compliance with the condition, unless such condition was made known to the approving officer or was suggested on the face of the bond; the officer need not leave his office to make personal inquiries: *McCormick v. Bay City*, 23 M. 457; *Brown v. Kent Probate Judge*, 43 M. 501; *Hessell v. Johnson*, 63 M. 623. So *held* of a guardian's bond. Nor would the fact that the obligation clause in a printed form was so filled out as to read "sureties" be enough to suggest to the approving officer such a condition: *Brown v. Kent Probate Judge*, 43 M. 501.

22. Where a debtor made a note to his creditor and signed his own name thereto, and then, without authority, that of two copartnerships of which he was a member, and then went with the creditor's agent to defendants, who also, at his request, signed the note as sureties, and neither the agent nor defendants were aware of the want of authority in the debtor to sign the copartnership names to the note, it was *held* that defendants were liable thereon: *Bowen v. Mead*, 1 M. 432.

23. The estate of a deceased surety is liable upon an injunction bond signed by him jointly with the principal obligors: *Stewart's Appeal*, 39 M. 619.

(b) *Creditor and surety; relation between, how regarded.*

24. The rights of sureties are always favored in the law, and persons standing in that relation are not held except so far as an intention to bind themselves is clearly manifested: *Columbus Sewer Pipe Co. v. Ganster*, 58 M. 385.

25. A surety's promise cannot be enlarged in the slightest particular without his consent: *Bullock v. Taylor*, 39 M. 187.

26. A surety can insist that he will not be bound except upon his own terms, and his obligation cannot fairly be extended beyond the scope of his written contract: *Johnston v. Kimball*, 39 M. 187.

27. No covenants that do not appear on the face of the bond can be implied as against the surety: *Bishop v. Freeman*, 42 M. 533.

28. Sureties execute a bond in view of its recitals, and their liability cannot be enlarged by contradicting the recitals and showing facts which they cannot be assumed to have known of: *Gunn v. Geary*, 44 M. 615.

29. A surety's contract is not to be enlarged beyond its terms: *Ferguson v. Davis*, 65 M. 677.

30. The undertaking of sureties cannot be enlarged by the courts: *Michie v. Ellair*, 60 M. 73.

31. The obligation of sureties is *strictissimi juris*, and is not to be enlarged by a proceeding had without their knowledge or consent: *Evers v. Sager*, 28 M. 47.

32. Creditors having no knowledge of the relations of their debtors to each other, as principal or surety, will not be affected in their rights by such relation; but if they know that one party is surety merely, they are bound, in any subsequent action they may take regarding the debt, not to lose sight of the surety's equities: *Smith v. Shelden*, 35 M. 42.

33. A creditor is not precluded from recovering against his debtor's surety if he does not know of any confidential relation between the two and has no reason to believe the debtor was guilty of fraud or improper concealment as against the surety: *Lee v. Wisner*, 38 M. 82.

34. If a surety is induced to become such by a fraud perpetrated on him by his principal's creditors — as by false representations as to material facts — the surety may make the defence of fraud: *Waterbury v. Andrews*, 67 M. 281.

35. Where a joint maker of a promissory note writes after his signature the word "surety" he does not thereby change or limit his liability to the payee or holder, or make it the latter's duty to proceed at his request against the other maker: *Inkster v. First National Bank*, 30 M. 143.

36. A surety is not the agent of the common creditor to enforce the latter's demand, for the creditor would not be bound by the surety's act, and until payment may look to any or all the other sureties: *Backus v. Coyne*, 45 M. 584.

37. A surety who, after time given by the creditor to the principal, promises to pay the debt with full knowledge of the facts, is liable without any new consideration for the promise. The action in such case is upon the original contract, and not upon the new promise: *Porter v. Hodenpuy*, 9 M. 11.

38. Where a surety on a promissory note secured himself by taking a chattel mortgage on a growing crop of wheat, an arrangement between him and the holder of the note that his principal might market the wheat and account to the holder for the proceeds is supported by sufficient consideration, in that the surety would lose his mortgage lien on any wheat thus marketed, and in marketing it the principal would be the agent of the holder. Whether or not the principal was a party to the arrangement would be immaterial if he assented to act and did act on it. It would also be immaterial whether the mortgage covered other property; for if the surety was discharged in law from his obligation as surety he could not keep the security alive to protect the holder of the note: *Chanter v. Reardon*, 32 M. 162.

39. In a complicated case upon a bill for accounting filed by an indorser the rights of surety and creditor growing out of arrangements and proceedings by the creditor subsequent to the indorsement were considered: *Hosie v. Barbour*, 49 M. 506.

40. Where the principal in a bond makes default in payment, the notice required to bind his surety need not be in writing unless so stipulated: *Lee v. Briggs*, 39 M. 592.

41. Where a bond required that demand upon the surety be made within a given time, a demand by the obligee's husband was held sufficient, though he did not expressly state that he made it in his wife's behalf, where no question of his authority was made at the time, and the facts indicated that it was assumed he made it in her name: *Ibid*.

42. No recovery can be had against the sureties on a bond for the jail limits, where the bond recites that the principal is in custody by virtue of a *capias ad respondendum* and the evidence shows it to be under a *capias ad satisfaciendum*, the measure of damages in the first instance being the actual damages sustained by the plaintiff, while in the second it is the amount of the execution: *Gunn v. Geary*, 44 M. 615.

(c) Evidence establishing the fact of suretyship.

43. One joint maker of a note may show in an action by the payee thereon that he was a surety for the other and that the payee knew the fact: *Barron v. Cady*, 40 M. 259.

44. So in the case of a note that is several as well as joint: *Stevens v. Oaks*, 58 M. 343.

45. It is always competent to show that any obligation, whatever its form, was in fact

made for the debt or liability of another, so that the contract is one of suretyship: *Canadian Bank of Commerce v. Coumbe*, 47 M. 358.

46. As against a purchaser of a past-due note it may be shown that an indorser became such for the maker's accommodation and at the request of the original holder, so that such indorser was entitled to be dealt with as a mere surety: *Simons v. Morris*, 53 M. 155.

47. Where an accommodation maker writes his name across the back instead of signing on the face of the note, this indicates, though not conclusively, an intention to sign as surety, not as joint maker, and it puts the original creditor on his guard: *Moynahan v. Hanaford*, 42 M. 329.

48. Parol evidence is admissible as between indorsers whose names successively appear upon a note to show that they are accommodation indorsers, and were, by agreement among themselves, co-sureties for the maker, and so liable to contribution: *Farwell v. Ensign*, 66 M. 600.

49. Where a bond expressly states that some of its signers are bound as principals and others as sureties, the relations of the signers cannot be shown by parol to be otherwise: *Coots v. Farnsworth*, 61 M. 497; *Farnsworth v. Coots*, 46 M. 117.

(d) *Judgment against principal or surety or both.*

50. Sureties on an executor's bond having been notified of application for leave to sue such bond were held bound by decree jurisdictionally passed against their principal on his accounting in the probate court: *Clark v. Fredenburg*, 43 M. 263; *Holden v. Lathrop*, 65 M. 652.

51. Sureties are concluded by a regular judgment against their principal, but not by a secret confession of judgment fraudulently and collusively made between their principal and the obligee; and in such case they may seek discharge in chancery: *Wright v. Hake*, 38 M. 525.

52. A surety in a replevin bond is not discharged by a judgment which, though consented to by both parties, was rendered upon data that had been lawfully ascertained by the court: *Estey v. Harmon*, 40 M. 645.

53. The surety in an injunction bond who has undertaken to abide by the decree and pay such damages as may be awarded against his principal is bound by such decree: *Lothrop v. Southworth*, 5 M. 436.

54. The power to render judgment against sureties on bonds in legal proceedings with-

out separate action is statutory, and cannot be extended by implication: *Willard v. Fralick*, 31 M. 431.

55. And such summary judgment cannot be sustained except where the surety must be understood to have agreed to it by his contract: *Mitchell v. Shuert*, 17 M. 65.

Validity of statutes permitting summary judgment: See CONSTITUTIONS, §§ 37, 39.

56. H. S. § 7663, permitting judgment to be immediately entered against the surety for costs when judgment is recovered against his principal, does not apply to sureties in bonds given on appeals from commissioners on estates or from the probate court; their undertaking is not for costs only: *Willard v. Fralick*, 31 M. 431; *Bondie v. Bourassa*, 46 M. 321; *Reed v. Northrup*, 50 M. 442; *Booth v. Radford*, 57 M. 357.

57. Plaintiff recovered judgment before a justice, and on an appeal by defendant recovered judgment for a less amount in the circuit court, where, on motion, he took judgment against the sureties in the appeal bond, and then took the case to the supreme court on case made. Held, that the latter court, on increasing the judgment in plaintiff's favor, could not render judgment against the sureties: *Mitchell v. Shuert*, 17 M. 65.

58. Sureties for plaintiff in *certiorari* may be included in judgment entered anew in the circuit court, with interest, against their principal: *McDermid v. Redpath*, 39 M. 372.

59. A security for costs in justice's court may be included in the judgment rendered against his principal on *certiorari* as well as on appeal: *McLean v. Isbell*, 44 M. 129; *Boatz v. Berg*, 51 M. 9.

60. Judgment for costs will not be given in the supreme court against a security for costs on reversing a judgment in favor of a plaintiff in whose behalf the security was given, where the costs awarded are those of the supreme court, and where those of the circuit court, which the security was primarily given for, are left to abide the result of a new trial: *Ortmann v. Merchants' Bank*, 42 M. 464. See *Schuetzen Bund v. Agitations Verein*, 44 M. 313.

61. But where, in a suit originally begun in justice's court and appealed to the circuit, where plaintiff was required to give security for costs, defendant obtained in the supreme court a judgment for costs of all courts, judgment was entered in the supreme court against the security: *Gay v. Hults*, 56 M. 153.

62. Judgment against surety for costs is entered "immediately" (H. S. § 7663) if entered when the successful party first moves

for judgment, even though the clerk, in entering final judgment, did not notice that there were sureties: *Ibid.*

63. Judgment against sureties for costs cannot exceed the penalty of their bond: *Ibid.*

64. When judgment summarily rendered against surety on appeal or *certiorari* is vacated on his notifying the party recovering it that he regards it as illegal, he cannot complain if it is vacated and if he is sued on his bond: *Porter v. Leache*, 56 M. 40.

As to how soon execution must issue to authorize levy upon property of surety in appeal bond, see *APPEAL*, § 486.

That application for execution against sureties in a bond for discharge of garnishment need not be on notice, see *GARNISHMENT*, § 182.

(e) *Liability of surety for good conduct of others.*

As to liability of sureties upon official bonds, see *OFFICERS*, §§ 215-240.

65. A surety is not presumed to have meant to become answerable for acts committed before he signed the obligation: *Hyatt v. Grover & B. S. M. Co.*, 41 M. 225.

66. The liability of a surety upon a bond does not extend to the acts of a partnership of which the principal in the bond subsequently becomes a member with the consent of the obligee: *White Sewing Machine Co. v. Hines*, 61 M. 423.

67. A firm were appointed agents for an insurance company, one of them having previously been the agent alone. They gave a bond for the faithful performance of their duties, which was conditioned, among other things, for the payment to the company of all moneys, etc., and other property belonging to it. They also gave their firm note for an amount covering a large amount of uncollected premiums due from the former agent. In an action on the bond to recover the amount due on the note, *held*, that the firm could not charge their surety by assuming the amount due the company, but that if they collected any part of that amount the bond would cover it: *Ball v. Watertown Fire Ins. Co.*, 44 M. 187.

68. Sureties on an agent's bond are liable for moneys collected by him within his district on policies issued independently of him; also for unearned premiums returned by the company on cancelled policies and remitted to the agent to be paid back to the assured: *Ibid.*

69. The bond of an insurance agent who had assumed an indebtedness of a former agent for uncollected premiums does not

cover the debt, but if the agent collects any part of the premiums it covers the amount: *Ibid.*

70. An insurance agent's bond was made to cover all liabilities and delinquencies of the agent under his existing or any future appointment, and whether as sole agent or a joint agent with others, and notwithstanding changes in the tenor of the agreement or agreements under which he should act. *Held*, that the sureties were not bound by this for the acts of a cashier appointed by the company to assist the agent, but would be liable for such moneys as came under the control of the agent or of subordinates for whose selection he himself was answerable: *Equitable Life Assurance Co. v. Coats*, 44 M. 260.

71. A bank teller's bond and the liability of sureties thereon cover any duties to which, in the natural course of the business of the bank, he may be assigned by the cashier or other proper officer in the temporary absence of the person whose duty it would be to perform them. So *held* where the receiving teller in the savings department was assigned, in the temporary absence of the general teller, to do his work in a bank in which the money was kept in a common fund: *Detroit Savings Bank v. Ziegler*, 49 M. 157.

72. Sureties on the bond of a sewing-machine agent are not responsible for his transactions outside of the territory assigned to him by his contract with the company: *White Sewing Machine Co. v. Mullins*, 41 M. 339.

73. Plaintiff sold certain goods to S., taking from him a mortgage thereon for the purchase money. Defendant agreed with plaintiff in writing that the goods so sold should at all times remain in possession of the purchaser, ready to be redelivered upon the default of any payment, except what had been sold from day to day at regular sales; and that if upon default of payment there should not be sufficient goods to liquidate the sum remaining due on the chattel mortgage, the balance should be made up by defendant. Under this agreement defendant was liable for the whole deficiency, without regard to the manner in which the goods had been disposed of, and not merely for such portions as plaintiff could show had been diverted from the ordinary sales by the purchaser: *Mills v. Spencer*, 3 M. 127.

74. The liability of the sureties on an administrator's bond is co-extensive with that of their principal; the balance on administrator's final account cannot be one sum in favor of distributee and another in favor of sureties: *Ward v. Tinkham*, 65 M. 695.

75. The sureties upon the bond given by a guardian before selling his ward's land are liable for his misapplication of the proceeds of the sale; but their liability cannot be fixed upon an application for leave to sue the bond: *Schles v. Darrow*, 65 M. 362.

II. DISCHARGE OF SURETY.

(a) *By general novation of contract.*

76. A surety is not discharged by the substitution of other obligations, unless such substitution is by concurrent action of principal and creditor: *Robertson v. First National Bank*, 41 M. 356.

77. A. and B. contracted with a school district to complete a school-house by a certain date, C. and D. being the sureties on their bond for performance, and they assigned their contract to E., with whom the district afterwards agreed to extend the time of completion. No site had been mentioned in the contract, nor was any selected or prepared until nearly the time of completion. *Held*, 1. That the district was bound to furnish a suitable site within a reasonable time for completion. 2. That the sureties were released by the district's recognition of the assignment and extension: *Todd v. Greenwood Sch. Dist.*, 40 M. 294.

(b) *By extending time.*

As to discharge of guarantor by extension of time, see GUARANTY, §§ 63-66, 69.

78. Extension of a note for a consideration and without the consent of a surety thereon releases the surety if the creditor knew the fact of suretyship: *Stevens v. Oaks*, 58 M. 343.

79. A surety upon the bond of an executor who is also residuary legatee is released by the act of a legatee who, without the sureties' assent or procurement, accepts the executor's note for the amount of the legacy after the time limited by the will for paying it has expired: *Probate Judge v. Abbott*, 50 M. 479.

80. Sureties upon a bond for the performance of a contract are released by an assignment of the contract and the grant of an extension of time to the contractors: *Todd v. Greenwood School District*, 40 M. 294.

81. The principle that an extension of time not consented to by the surety discharges him applies as well to the case of a joint maker of a note, who is in fact (as known to the payee) an accommodation maker, as to the case of those who are ostensible sureties: *Barron v. Cady*, 40 M. 259.

82. The extension of time upon a note in

consideration of the signature of a new indorser does not release one who, as to the other maker, is only a surety, but to the holder is known as a joint maker only: *Gano v. Heath*, 36 M. 441.

83. A stockholder's liability for his corporation's labor debt is that of a surety, and is discharged where the laborer extends the time and accepts the note of the corporation: *Hanson v. Donkersley*, 87 M. 184.

84. As retiring partners, whose liability for the firm's debt has been assumed by their former copartners, stand as sureties, they are discharged by extensions granted to such copartners by firm creditors who have knowledge of the dissolution of the firm and of the assumption of liabilities: *Smith v. Shelden*, 85 M. 42; *Johnson v. Emerick*, 70 M. 215 (May 11, '88).

85. Plaintiffs, in renewal of the notes of a firm which they held, and which were secured by the guaranty bond of a surety, took the individual notes of a member of the firm, payable at a future time, signed thus: "For late firm of P. C. & Co., W. J. P." *Held* that, although time might not be given thereby to all the members of the firm, it was given to the maker of the renewal notes, and the surety was consequently discharged: *Farmers', etc. Bank v. Kercheval*, 2 M. 504.

86. Where a party purchasing land gives in payment notes of a third person, securing them by a mortgage on the land, he is in the position of a surety, and an extension granted without his consent to the principal debtor discharges the mortgage: *Metz v. Todd*, 36 M. 473.

87. The debtor of a bank asked an extension and sent a consideration therefor, which the bank applied on the debt without answering the request or notifying the debtor that the extension was declined, as in fact it was. It did not appear that the debtor understood that an extension was agreed upon. *Held*, that there was no binding agreement for an extension and that the debtor's surety was not released: *Garton v. Union City Bank*, 34 M. 279.

88. The length of time granted by way of extension does not affect the question whether a surety is discharged: *Smith v. Shelden*, 85 M. 42.

89. A mere voluntary indulgence on the debt does not release the surety where there is no binding arrangement between creditor and debtor for further time: *Frickee v. Donner*, 35 M. 151.

90. The discharge of a surety by an extension of time on his principal's debt results

from the contract for extension and not merely from forbearance to collect the debt or from a promise to forbear collection: *Michigan State Ins. Co. v. Soule*, 51 M. 312.

91. A surety is not discharged by a mere extension of time, unless it is an extension resting in a valid contract; and a subsequent purchaser of mortgaged land does not stand as a mere surety, nor can he complain of an extension of the mortgage where he has a right to redeem: *Case v. O'Brien*, 66 M. 289.

92. A creditor may extend the time for his debtor to pay in, without discharging sureties, if he by the same agreement expressly reserves his remedy against them (but see *infra*, § 93): *Bailey v. Gould*, W. 478.

93. A surety ought not to rest in a worse position than his principal. How far a creditor can legally agree with his debtor not to look to him until he has exhausted his remedy against an accommodation surety, and how far such creditor could claim as a *bona fide* holder against one who has been defrauded into becoming a surety, *quere*: *Kelly v. Freedman*, 56 M. 321.

(c) *By alteration of contract.*

As to discharge of guarantor by change of contract, see GUARANTY, §§ 62, 68.

94. Any alteration in the terms of their contract, by the parties to it, which changes the situation of the sureties without their consent, discharges them when the contract has been actually made: *People v. Brown*, 2 D. 9.

95. Where the penalty of sheriff's official bond was reduced \$5,000 by the board having power to fix it, after a part of the sureties had signed it, it was *held* that it was thereby made void as to the sureties who had signed it, but that it was valid as to those who signed it afterwards: *Ibid*.

96. A creditor who knows that his debtor is only a surety is bound to take no steps which will change the principal's liability without the surety's consent: *Canadian Bank of Commerce v. Coumbe*, 47 M. 358.

97. A surety only engages to make good a deficiency; and an arrangement between his principal and the creditor, without his privity, whereby the principal is not to be sued by the creditor, is a substantial alteration of the contract of suretyship to the surety's prejudice: *Farnsworth v. Coots*, 46 M. 117.

98. In an action brought by the obligee in an indemnity bond against the surety, there was evidence tending to show that the principal and the obligee had agreed, without the surety's knowledge, that the principal should not be sued on the bond, but that suit should

be brought in the interest of the principal against the surety. The defendant offered for submission to the jury special questions as to whether the suit was not brought for the benefit of the principal, and not for that of the obligee, and whether a check given by the principal to the obligee's attorney, but not used, had not been given on the understanding that the principal should not be sued on the bond. The court refused to submit the questions and did not cover them in his charge. *Held*, that the refusal was erroneous: *Ibid*.

As to what alteration of note will release maker or indorser, see ALTERATION OF INSTRUMENTS, II.

99. See *infra*, § 150.

100. Where one has agreed to be surety for payment of promissory notes to be executed by his principal, the unauthorized insertion in such notes of provisions for the payment of current exchange or express charges and of an attorney fee does not release the surety; such provisions being in the one case no change of his liability, and in the other being void: *Bullock v. Taylor*, 39 M. 137.

101. One who by indorsement upon a lease is jointly liable for rent upon the lessee's default is not discharged by an agreement subsequently entered into between lessor and lessee reducing the rent: *Preston v. Huntington*, 67 M. 139.

102. A discontinuance as to part of the defendants by the plaintiff in an attachment suit is such an alteration of the operation of the contract of the sureties, in a bond given to secure the release of the attached property, as will discharge the sureties: *Andre v. Fitzhugh*, 18 M. 93.

103. A surety in a bond on appeal by joint defendants from a justice is released by a judgment on appeal against one only, unless the other was an infant or otherwise incapable, so that his undertaking was a mere nullity: *Post v. Shafer*, 63 M. 85.

104. A discontinuance on an appeal from a justice's court as to an infant joint defendant does not discharge the surety; such discontinuances are contemplated by the appeal bond: *Taylor v. Dansby*, 42 M. 82.

105. Plaintiff's surety for costs in a justice's court is not discharged by a judgment in favor of plaintiff, but is discharged by the submission of the cause to arbitration pending appeal: *Dunn v. Sutliff*, 1 M. 24.

106. Sureties in a bond on appeal from a justice are discharged by a radical change in the cause made under stipulation, without their consent, amending the pleadings in a

manner that H. S. § 7025 does not warrant: *Evers v. Sager*, 28 M. 47.

107. Dealings with the principal obligor in a replevin bond for her discharge, without the knowledge or assent of the sureties therein, release the latter: *Greenlee v. Lowing*, 35 M. 63.

108. The sureties in a replevin bond are not discharged by the transfer, under a statute passed before the bond was given, of the replevin suit from the circuit to a municipal court: *Reusch v. Demass*, 34 M. 95.

(d) *By release of other securities by creditor.*

109. Where the vendor in a land contract had taken notes payable to his own order for the purchase price, which notes he indorsed to a bank, and at the same time gave the bank a deed of the lands as security for the payment of the notes, and the bank afterwards took from the vendee a quitclaim deed of the lands without the vendor's knowledge, it was held that such deed was a rescission of the contract, and the vendor was thereby discharged from his liability as indorser of the notes—at least to the extent of the value of the land: *Ives v. Bank of Lansingburgh*, 13 M. 361.

110. An agreement between the vendee and the bank, at the time of the delivery of the quitclaim deed, made without the knowledge of the vendor, that such deed should not affect the liability of the vendee on his notes, would not prevent its having this effect upon the rights of the vendor as indorser: *Ibid*.

111. One who has secured another's debt is entitled to the benefit of any further security which the lienholder obtains from the debtor; and if the latter security consists of a chattel mortgage and the lienholder disposes of the property which it covers, for his own benefit and without the consent of the person giving the first security, the latter is released, to the extent, at least, of the property so disposed of. And its proceeds must be first applied to the satisfaction of the oldest mortgage if the securities have been so confused by the lienholder as to make it impossible to distinguish between them: *Wendell v. Highstone*, 52 M. 552.

112. If A. secures B.'s debt to C., and C. without A.'s consent disposes of security to A.'s disadvantage, A. is discharged: *Ibid*.

(e) *Other facts discharging surety.*

113. As soon as sureties on a bond of indefinite duration notify the obligees that they will not be bound in future, they are dis-

charged from further liability unless the obligees will be prejudiced by their withdrawal: *Jeudevine v. Rose*, 36 M. 54.

114. Whatever, in contemplation of law, makes a satisfaction of the debt and thereby discharges the principal necessarily extinguishes the surety's liability. Where recovery cannot be had against the principal (unless his defence is personal) none can be had against the surety: *Farmers', etc. Bank v. Kingsley*, 2 D. 879, 403.

115. A bank's guaranty against loss or liability for signing as sureties a note discounted by the bank would be a bar to any suit by the bank against the sureties: *First National Bank v. Bennett*, 33 M. 520.

116. A surety sued on an indemnity bond is entitled to show that an arrangement has been made between his principals and the obligee whereby the bond has been paid and the principals discharged from further liability: *Coots v. Farnsworth*, 61 M. 497.

117. If a bank with which a note is left for collection sells it without authority to do so, and satisfies the payee, the purchaser cannot afterwards collect it as against the maker's surety, even though the maker consents to continue liable: *Fuller v. Bennett*, 55 M. 357.

118. A creditor's delay in collecting his debt does not itself discharge a surety where there is no binding agreement for delay: *Hayes v. Knox*, 41 M. 529.

119. A creditor's neglect or refusal to enforce his demand against his debtor at the request of the latter's surety does not release the surety: *Michigan State Ins. Co. v. Soule*, 51 M. 312; *Roberts v. Hawkins*, 70 M. 566 (June 8, '88).

120. It seems that if the appellee in a cause removed from justice's court unreasonably delays taxing costs so that the surety is prejudiced, the latter will be protected: *Weiss v. Wayne Circuit Judge*, 50 M. 158.

III. SURETY'S REMEDIES.

(a) *In general.*

121. One who consents to become surety for a party in a legal proceeding must see to it that he acts on the request of the party himself or his attorney or agent duly authorized to represent him in that respect: *Mitchell v. Chambers*, 43 M. 151.

122. And where the managing owner of a vessel has obtained bail for its release from detention, such bail, having paid executions, cannot hold co-owners liable for reimbursement without showing that they were parties to procuration of bail: *Ibid*.

123. Where sureties for building contractors assume the contract they can claim nothing under it which the original contractors could not: *Knapp v. Swaney*, 56 M. 345.

124. Sureties are bound to use some diligence for their own protection: *Detroit v. Weber*, 26 M. 284.

125. Where contractors directed payments to be made to their sureties, and they were made on orders drawn in favor of the contractors and indorsed by them to their sureties, but always delivered to the sureties by the party making payment, it was held that this course of business did not of itself indicate a waiver by the sureties of their rights under the order that payment be made to them instead of their principals: *Howard v. Holland Public Schools*, 50 M. 94.

126. That an absolute transfer by a defaulting principal to his surety to provide for the default and the surety's liability is not subject to garnishment and gives rise to no trust in favor of the principal, see *Spear v. Rood*, 51 M. 140.

127. If the principal fails to meet his obligation with due diligence his surety cannot, in general, appeal to chancery for protection, but must first perform his obligation as surety, and may then sue at law for indemnity: *McElroy v. Hatheway*, 44 M. 399.

128. A surety on a residuary legatee's bond to pay the testator's debts, etc., cannot have discovery and relief by way of accounting in equity against his principal and co-sureties: *Ibid.*

(b) General rights against principal.

As to recovery by surety of payments that include usury, see INTEREST, §§ 130, 131.

129. Where one deposits money with another who has signed notes with him as a surety before the notes mature, and it is agreed between them that the latter should apply the money so received in discharge of the notes, the former cannot afterwards revoke such agreement; the suretyship is a sufficient consideration to support such a contract: *Mandigo v. Mandigo*, 26 M. 349.

130. Where a principal has authorized his surety to sell certain of his property, indemnify himself, and use the rest of the proceeds for specific purposes, he cannot complain if on his own advice the surety takes paper instead of cash in payment; or if he takes it in his own name, so long as he acts in a careful, prudent, honest and business-like way and with such care and judgment as a reasonable man should exercise: *Fick v. Runnels*, 48 M. 302.

131. If a contract, whatever its form, is in fact one of suretyship for another the fact may be shown, and the surety if held to pay it may sue for reimbursement: *Canadian Bank of Commerce v. Coumbe*, 47 M. 358.

132. The discharge of a surety upon *certiorari* from the circuit to a justice's court, whether erroneous or not, does not concern the principal, who cannot complain of it: *Fewlass v. Abbott*, 28 M. 270.

133. A defaulting agent cannot make good his default as between himself and his sureties on the one hand, and his principal on the other, by taking the principal's money for the purpose: *Detroit v. Weber*, 29 M. 24.

134. The payment of money by a surety for his principal's benefit raises an implied promise against the principal to refund on demand, and giving credit for it is equivalent to an extension of credit: *Lee v. Wisner*, 38 M. 82.

135. An agreement given by principals to their sureties, by which, reciting that in order to save harmless their sureties they agree to pay the demand secured within thirty days after it comes due, is not one of indemnity merely; and the sureties have a right of action upon it on the failure of their principals to make the payment (see a similar case, MORTGAGES, § 484): *Hall v. Nash*, 10 M. 303.

136. Where such an agreement is secured by mortgage, and suit is brought to foreclose the same before payment by the sureties, *quere* whether the court will in any case see to the application of the money by the sureties. There is no occasion to do so where it appears that subsequent to the commencement of the suit the complainants have paid the demand secured: *Ibid.*

137. Where a surety who has satisfied his principal's obligation sues the principal as for money paid to his use, it is nothing to the jury that he paid it to secure his own release from the obligation, and not with the sole intent of benefiting the principal: *Lange v. Perley*, 47 M. 352.

138. In an action by a surety for money paid to his principal's use, defendant may show, by way of accord and satisfaction or as an executed compromise, that in accordance with an agreement between himself and plaintiff and other sureties he has assigned all his property in consideration of being exonerated from all liability: *Ibid.*

139. A retiring partner standing in the relation of surety by virtue of his copartner's agreement to pay the firm debts is entitled, if compelled to pay such a debt, to collect the

whole debt, and is not confined to enforcing contribution: *Johnson v. Emerick*, 70 M. 189 (May 11, '88).

(c) Subrogation.

140. A surety who pays his principal's debt is entitled to be subrogated to all the rights of the original creditor; *e. g.*, to the title to and possession of an article of personalty which was to remain in such creditor until the debt should be paid: *Myres v. Yaple*, 60 M. 339, 65 M. 403.

141. Sureties who have paid, on execution and levy, the whole of a judgment, intending to have the levy kept alive for enforcing contribution, are entitled to be subrogated thereto, and may join in a suit to remove obstacles obstructing their right of recurrence to it in making their co-surety contribute: *Smith v. Rumsey*, 33 M. 183.

142. A surety on an administrator's bond who has been compelled to pay creditors after an order of distribution may be subrogated to their rights, and may pursue and recover trust funds in the administrator's hands that have been diverted and misapplied: *Pierce v. Holzer*, 65 M. 263.

(d) Contribution.

143. Contribution cannot be enforced on the ground merely that a liability exists, or even that a judgment has been recovered; there must have been either a payment of the demand or such an assumption of it as imposes on the claimant more than his share, and correspondingly releases the others: *Backus v. Coyne*, 45 M. 584.

144. B. and G. gave a joint note to C., G. signing as B.'s surety. C. indorsed it to P., who afterwards released it, taking instead a joint note given by G. with C. as surety. Held, that on the original note G. was the debtor of C. and would have had recourse only to B., and that on paying the second note he could not claim contribution from C., who was virtually his surety in both cases: *Goetschius v. Calkins*, 46 M. 323.

145. A surety who asks another person to become his co-surety does not thereby bind himself to save the other harmless; they are equally responsible unless there is a plain understanding changing their liability: *McKee v. Campbell*, 27 M. 497.

146. Successive indorsers of commercial paper are not, as such, sureties for each other and liable to contribution: *McGurk v. Huggett*, 56 M. 187.

But they may be shown by parol to be such as between themselves: See *supra*, § 43.

147. Where a surety has been compelled to pay the full amount of his principal's debt, and some of his co-sureties have become insolvent or are beyond the reach of process, he is entitled in equity to recover from the remainder the proportion they would have to pay of the whole amount if insolvents and non-residents were excluded: *Stewart v. Goulden*, 52 M. 143.

148. A surety on a bond who has paid the whole of a judgment recovered thereon becomes a judgment creditor of the other sureties, and may file a bill to set aside a conveyance made by one of them in his fraud: *Rynearson v. Turner*, 52 M. 7.

149. A surety on a bail bond is entitled to contribution from a co-surety for any payment in excess of his share, unless there is an agreement to the contrary, express or implied: *McKee v. Campbell*, 27 M. 497.

150. One who stands in the position of a surety is justified in employing counsel and incurring costs in defending, for the common benefit, against illegal demands; and his co-sureties must contribute to make him good, whether he succeeded or not, provided that he acted prudently in the light of facts indicating the probability of a sufficient recovery to justify the expense: *Backus v. Coyne*, 45 M. 584.

151. Where one of two sureties paid his half of the joint liability, and joined with his co-surety in a note for the other half, and was sued and suffered judgment on the note and paid the judgment, such note is to be regarded as given for the sole debt of the co-surety, and the money as paid to his use; in such case the necessary costs are recoverable back as well as the debt, as they were caused by the default of the latter, and paid under legal compulsion: *McKee v. Campbell*, 27 M. 497.

152. Under an execution and levy certain sureties paid the whole judgment, intending to keep the security alive against their co-sureties so as to obtain contribution. Held, that they were entitled to insist that the levy should remain to be enforced for their benefit against the co-sureties: *Smith v. Rumsey*, 33 M. 183.

153. A surety on a promissory note, the maker of which had become insolvent, conveyed his land to his son for inadequate consideration and in evident contemplation of being held liable as surety. The other surety paid the note, sued him for contribution and levied on the land conveyed. Held, on a bill in aid of execution, that the deed should be

set aside as against the execution levy: *Pashby v. Mandigo*, 42 M. 172.

154. A bill in equity lies to obtain contribution from the representatives of a deceased co-surety where the case involves an inquiry into the liability and solvency of other sureties: *Rynearson v. Turner*, 52 M. 7.

SURVEYS.

As to surveys of PUBLIC LANDS, see that title, I.

1. In private as in public surveys monuments control course and distance: *Diehl v. Zanger*, 39 M. 601.

2. A correct survey of lots conveyed by deed with reference to a plat, which calls the points of the compass with reference to the lines and angles of the lots, must follow the plat though its lines are not conformable to the true meridian: *Bower v. Earl*, 18 M. 307.

3. One who claims that the county surveyor has not performed his duty, or has blundered in performing it, has the burden of showing that fact: *Smith v. Rich*, 37 M. 549.

4. Where lots have been conveyed by reference to a plat which states that they are of a certain width, the testimony of the surveyor who originally scaled the plat is inadmissible to show that some of the lots are of less width on the plat: *Twogood v. Hoyt*, 43 M. 609.

5. The location or starting-point of a section line cannot be determined finally by the opinion of a surveyor, but is a question of fact for the jury: *Stewart v. Carleton*, 31 M. 270.

6. Surveyors cannot finally determine boundaries; all bounds and starting-points are questions of fact, to be determined by testimony; and *ex parte* surveys cannot be regarded: *Cronin v. Gore*, 38 M. 881; *Gregory v. Knight*, 50 M. 61; *O'Brien v. Cavanaugh*, 61 M. 368; *Fisher v. Dowling*, 66 M. 370.

7. A starting-point cannot be assumed to be true merely because surveyors agree upon it; some proof must be made that it was one of the points actually fixed by the original survey before a survey starting from such point can be regarded: *Beaubien v. Kellogg*, 69 M. 833.

8. A tangible and established boundary is not to be disturbed by a surveyor's opinion based on examination of records, etc.: *Stewart v. Carleton*, 31 M. 270.

9. Where ejectment is based on an allegation of a mistake in the original survey, it is admissible to show that the boundaries have been defined for twenty years or more: *Diehl v. Zanger*, 39 M. 601.

10. A boundary long treated and acquiesced in as the true line, or fixed by adverse possession, should not be disturbed on new surveys: *Dupont v. Starring*, 42 M. 492; *Bunce v. Bidwell*, 43 M. 542; *Wilmarth v. Woodcock*, 66 M. 831.

Mutual survey and acquiescence as fixing boundary, see ESTOPPEL, §§ 231, 232.

11. A dividing line established for mutual convenience was held no evidence of line originally surveyed: *Dondero v. Frumveller*, 61 M. 440.

12. Old surveyed lines which have become uncertain are not to be superseded by new ones, but are to be ascertained by a resurvey, if rights have become fixed and regulated in reliance upon the common understanding as to where they lie: *Baker v. McArthur*, 54 M. 139.

13. A survey made after the monuments of the original survey have disappeared is inferior to a long-established fence as evidence of actual boundaries: *Diehl v. Zanger*, 39 M. 601.

14. And the question in such case is not how an entirely accurate survey would have located the lots, but how the original stakes located them: *Ibid*.

15. A resurvey was had when the evidences of the original survey had nearly disappeared, and a question afterwards arose as to where the true line was. The boundaries of property conveyed before the resurvey were not to be disturbed. Held proper to show that lots had been laid out and buildings put up with reference to the line as established by the first survey, and that it had been shown by a recent survey that the line as run by the resurvey would cross lots and bisect buildings: *Baker v. McArthur*, 54 M. 139.

And see EVIDENCE, § 818.

16. Resurveys cannot be allowed to unsettle the lines of town lots after the lot-owners have established such lines in accordance with the stakes which they have found planted or recognized by authority, and in reliance on which they have purchased: *Flynn v. Glenny*, 51 M. 580.

17. Where the line between quarter sections of land has gone unquestioned for a long time — as in this case twenty-three years — it ought not to be disturbed upon a mere disagreement between surveys, especially if the later survey is made under circumstances unfavorable to accuracy, such as the absence of corner posts and witness trees and the existence of a boundary dispute: *Case v. Trapp*, 49 M. 59.

18. Old fences are strong evidence in fixing boundary lines as located by the original survey; and if they have stood for twenty or thirty years they should be taken as the true lines, at least as against a resurvey which assumes a starting-point at a certain street without any evidence that it was a point fixed by the original survey: *Beaubien v. Kellogg*, 69 M. 333.

19. And where a survey which attempted to reproduce the original regarded the lines of such old fences, while a later survey, made after the fences had been removed, assumed a starting-point, it was *held* that the jury should have been instructed to consider the relative situations of the fences in determining which survey best reproduced the lines as originally located: *Ibid*.

20. It *seems* that a survey made much earlier than another and at a time when the old landmarks were more apt to be found and rightly located is to be preferred as the more correct: *Wilmarth v. Woodcock*, 66 M. 331.

21. Test surveys based upon speculative starting-points cannot be used to fix a disputed boundary between lots which can be settled by a proper construction of a plat: *Reimers v. Quinnin*, 49 M. 449.

22. A resurvey which starts from a point outside of and not belonging to the immediate plan or local system that controlled the original survey is inadmissible to show that an old fence is an incorrect boundary: *Burns v. Martin*, 45 M. 22.

23. Streets opened, used and acquiesced in form new starting-points in subsequent surveys of premises conveyed with reference to a recorded plat: *Twogood v. Hoyt*, 43 M. 609; *Wilmarth v. Woodcock*, 66 M. 331.

24. The location of a street that has been established and recognized for more than ten years cannot be shifted about by surveyors: *Pratt v. Lewis*, 39 M. 7.

25. The *ex parte* action of surveyors is not entitled to credence and authority upon the true lines of a highway and the fact of encroachment: *Gregory v. Knight*, 50 M. 61.

26. A county surveyor's certificate is not evidence of the facts therein contained (H. S. § 616) unless it contains the particulars required by H. S. § 619 to be entered in the surveyor's record; it must show that there was a survey, for whom made, etc.: *Smith v. Rich*, 37 M. 549.

27. No presumptions can be based upon the acts of a county surveyor relating to official surveys, unless the requirements of H. S. §§ 616, 619 have been complied with. Oral evidence of his acts is of no more weight than

similar evidence would be concerning the acts of any other surveyor: *Beeman v. Black*, 49 M. 598.

Parol evidence inadmissible to vary survey, see EVIDENCE, §§ 1260, 1261.

That survey of road is an entirety so that showing part renders rest admissible, see EVIDENCE, § 1053.

Record of survey as proof of line of road, see HIGHWAYS, § 11.

As to proof of surveyor's field-notes, see EVIDENCE, § 1195.

That others than surveyors may testify to lines, etc., see EVIDENCE, § 596.

That surveyor's tax included in a levy is presumably lawful, see TAXES, § 75.

SWAMP LANDS.

See PUBLIC LANDS, III.

TAXES.

I. GENERAL PRINCIPLES.

- (a) *What is a tax.*
- (b) *The taxing power generally.*
- (c) *Purpose and object of tax.*
- (d) *Apportionment and uniformity.*
- (e) *Strict compliance.*
- (f) *Irregularities and defects; presumptions; curative acts.*
- (g) *Specific taxes.*

II. WHAT TAXABLE; EXEMPTIONS.

- (a) *In general.*
- (b) *Taxation of railroad companies.*
- (c) *Taxation of banks and bank stock.*
- (d) *Taxation of insurance companies.*
- (e) *Exemptions.*

III. ASSESSMENT.

- (a) *General matters.*
- (b) *Assessors.*
- (c) *Locus of assessment.*
- (d) *To whom property to be assessed; resident and non-resident.*
- (e) *Description of property.*
- (f) *Valuation.*
- (g) *Review of assessments.*
- (h) *Signing roll; certificate.*
- (i) *Equalization.*
- (j) *Re-assessment; rejection.*

IV. LEVY; APPORTIONMENT.

- (a) *In general.*
- (b) *Ascertainment of amount; what may include.*
- (c) *Conditions precedent to levy.*
- (d) *The levy; excess.*
- (e) *Apportionment among townships.*

V. TAX-ROLL AND WARRANT; EXTENSION.

- (a) *Tax-roll.*
- (b) *The warrant; extension.*

VI. COLLECTION AND ITS INCIDENTS.

- (a) *Tax collectors.*
- (b) *Interest and penalties.*
- (c) *Liens for taxes.*
- (d) *Payment.*
 - 1. In general.
 - 2. Recovery back; duress; protest.
 - 3. Lien for taxes paid.
- (e) *Seizure for tax; warrant and return.*
- (f) *Actions for unpaid taxes.*
- (g) *Enjoining collection.*
 - 1. Jurisdiction; when injunction granted.
 - 2. Parties.
 - 3. Pleading and practice.
- (h) *Return of delinquent taxes.*

VII. APPROPRIATION; ACCOUNTING.

VIII. SALES.

- (a) *Power to sell in general.*
- (b) *Decree; notice.*
- (c) *The sale; description.*
- (d) *Fraud of officers and bidders.*
- (e) *Effect of sale; certificate.*
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IX. THE DEED; TAX TITLES.

- (a) *Validity; execution.*
- (b) *Description of the land.*
- (c) *Operation and effect.*
- (d) *As evidence; presumptions.*
- (e) *Who can rely upon tax titles.*
- (f) *Who may attack.*
- (g) *Limitation of actions with reference to tax titles.*
- (h) *Quieting title under.*
- (i) *Relief against tax titles.*
- (j) *Reimbursement of defeated purchaser; lien as for taxes paid.*

X. TAX LEASES.

As to special assessments for improvements in cities, etc., see CITIES AND VILLAGES, §§ 198-246; CONSTITUTIONS, §§ 841, 845-860.

As to the stamp tax, see STAMPS.

I. GENERAL PRINCIPLES.

(a) *What is a tax.*

1. A tax, in the view of Const., art. 14, is a burden, charge or imposition for public uses: *Van Horn v. People*, 46 M. 188.

2. Taxes are charges levied for the support of the government, and their amount is regulated by its necessities: *Sands v. Manistee, etc. Co.*, 123 U. S. 288.

3. Taxation and eminent domain distinguished: *Williams v. Detroit*, 2 M. 560.

4. Assessments imposed upon property for local improvements are taxes: *Ibid.*; *Lefevre v. Detroit*, 2 M. 586; *Woodbridge v. Detroit*, 8 M. 274; *Motz v. Detroit*, 18 M. 495.

5. Taxation for general public purposes and assessments for local improvements in cities and villages distinguished: *Woodbridge v. Detroit*, 8 M. 274.

6. Tolls for the use of passage over land or water highways are not taxes: *Benjamin v. Manistee River Imp. Co.*, 42 M. 628; *Manistee, etc. Co. v. Sands*, 53 M. 593, 123 U. S. 288.

7. The tax on dogs is not a charge for the purpose of raising revenue, but is rather a police regulation or a license: *Van Horn v. People*, 46 M. 183; *Hendrie v. Kalthoff*, 48 M. 306.

8. Water rates paid by consumers are not taxes, but assessments for water-pipes laid in front of vacant lots are: *Jones v. Detroit Water Commissioners*, 84 M. 273.

9. A license fee for keeping a ferry is not a tax: *Chilvers v. People*, 11 M. 43.

10. Nor is a fee charged for keeping meat stalls outside of public markets: *Ash v. People*, 11 M. 347.

(b) *The taxing power generally.*

11. The unrestricted power to tax includes the power to destroy by taxation: *Fyfield v. Close*, 15 M. 505.

12. The power of the state to tax is plenary: *Butler v. Saginaw Supervisors*, 26 M. 22.

13. No property is beyond the state's taxing power unless designedly and unequivocally put beyond it by sovereign power: *Robertson v. State Land Office Com'r*, 44 M. 274.

14. The state may levy taxes until all its needs are supplied: *Attorney-General v. St. Clair Supervisors*, 30 M. 388.

15. All taxes must be authorized by the state: *Youngblood v. Sexton*, 32 M. 406.

16. The state has the same power to tax corporations as it has to tax individuals, unless charter expressly parts with power: *People v. Detroit & P. R. Co.*, 1 M. 458.

17. The right to change the methods or extent of taxation always exists when there is no express contract to the contrary: *Detroit v. Detroit & H. P. R. Co.*, 48 M. 140; *East Saginaw Salt Manuf. Co. v. East Saginaw*, 13 Wall. 373.

18. Courts will not limit the exercise of the taxing power simply because methods are harsh, unreasonable and arbitrary: *Robertson v. State Land Office Com'r*, 44 M. 274.

19. A prohibited business may be taxed; taxation of a business implies no idea of special protection: *Youngblood v. Sexton*, 32 M. 406; *People v. Walling*, 53 M. 264.

20. The legislature cannot by mere direction impose taxes; taxation implies proceedings *in pais*, in some of which the tax-payer has a right to be heard: *Butler v. Saginaw Supervisors*, 26 M. 22.

21. Judicial proceedings are not necessary in appropriating property under the power of taxation: *Weimer v. Bunbury*, 80 M. 201.

22. Municipalities have no inherent right to decide what taxes shall be levied for local government: *Youngblood v. Sexton*, 32 M. 406.

23. Municipalities have no inherent power of taxation, but take only so much as the state sees fit to allow: *People v. Salem*, 20 M. 452.

24. The burden is on a municipality to show grant of power to levy tax: *Williams v. Detroit*, 2 M. 560.

25. Const., art. 15, § 18, requires the legislature to restrict the power of municipalities to tax; and that body only performs an imperative duty when it imposes such a limitation on a city: *Wattles v. Lapeer*, 40 M. 624.

26. Provisions of §§ 23 and 32 of the Detroit police act (Laws 1865, p. 99) held to be restrictive of the power of taxation within the meaning of Const., art. 15, § 13: *People v. Mahaney*, 13 M. 481.

27. A school district cannot levy a tax except for a purpose specified by statute: *Hinman v. School District*, 4 M. 168.

28. Municipalities cannot exercise or be authorized to exercise power of taxation in aid of private corporations, such as railroads: *People v. Salem*, 20 M. 452; *Bay City v. State Treasurer*, 23 M. 499; *Thomas v. Port Huron*, 27 M. 820.

29. If the legislature cannot impose a tax directly it cannot authorize its imposition by a vote of the municipality or people: *Bay City v. State Treasurer*, 23 M. 499; *Anderson v. Hill*, 54 M. 477.

As to taxation in its relations to local self-government, see CONSTITUTIONS, §§ 477-483.

30. Power of taxation may be exercised in same statute with police power: *Reithmiller v. People*, 44 M. 280.

(c) Purpose and object of tax.

As to the constitutional requirement that a law imposing a tax shall specify object to which tax is to be applied, see CONSTITUTIONS, §§ 610-612.

That the state cannot levy taxes in aid of internal improvement, see CONSTITUTIONS, §§ 425-432, 579.

31. Taxation must be for a public purpose: *People v. Salem*, 20 M. 452; *Bay City v. State Treasurer*, 23 M. 499; *Butler v. Saginaw Supervisors*, 26 M. 22; *Attorney-General v. Bay Supervisors*, 34 M. 46; *Chaffee's Appeal*, 56 M. 244.

32. Tax imposed on a municipality solely must not only be for a public purpose, but must be for a purpose of local interest: *People v. Salem*, 20 M. 452.

33. The state cannot, by a process of taxation, take from an individual money to supply a mere local convenience or need: *Park Commissioners v. Detroit*, 28 M. 228.

34. State may compel local taxation for general purposes but not for local ones: *Youngblood v. Sexton*, 32 M. 406.

35. A municipal body authorized to raise money by tax cannot raise it for the purposes or uses of others, but must apply it to public uses under its own control or care: *Attorney-General v. Bay Supervisors*, 34 M. 46.

36. Taxation is based upon some idea of compensation, benefit or advantage, direct or indirect, to the person taxed: *Williams v. Detroit*, 2 M. 560.

37. It is contrary to our tax system to levy taxes for the purpose of accumulating funds for the future: *Midland v. Roscommon*, 39 M. 424.

38. It is the policy of our law to raise taxes no faster than they are likely to be needed: *Michigan Land, etc. Co. v. L'Anse*, 63 M. 700.

But levy for highways contemplated though not actually laid out is not void: See HIGHWAYS, § 128.

(d) Apportionment and uniformity.

39. Common burdens should be sustained by common contributions, regulated by some fixed rule and apportioned according to some uniform ratio of equality: *Williams v. Mayor*, 2 M. 560; *Ryerson v. Utley*, 16 M. 269.

40. The principle of apportionment lies at the foundation of the taxing power: *Woodbridge v. Detroit*, 8 M. 274; *Motz v. Detroit*, 18 M. 495; *Chaffee's Appeal*, 56 M. 244.

41. Apportionment according to some rule or basis is a necessary element in all taxation: *People v. Salem*, 20 M. 452; *Bay City v. State Treasurer*, 23 M. 499; *Callam v. Saginaw*, 50 M. 7.

42. The rule of apportionment is for the legislature to determine: *Williams v. Detroit*,

2 M. 560; *Woodbridge v. Detroit*, 8 M. 274; *Youngblood v. Sexton*, 32 M. 406.

43. Taxes cannot be imposed in disregard of any rule of uniformity: *People v. Auditor-General*, 7 M. 84; *Motz v. Detroit*, 18 M. 495; *Bay City v. State Treasurer*, 23 M. 499; *Merrill v. Auditor-General*, 24 M. 170.

44. The policy of the state is to secure uniformity and equality: *Hogelskamp v. Weeks*, 37 M. 422.

45. A state burden is not to be imposed upon any territory smaller than the whole state, nor a county burden upon any territory smaller or greater than the county: *People v. Salem*, 20 M. 452. See *Sears v. Cottrell*, 5 M. 273; *Ryerson v. Utley*, 16 M. 269.

46. In general, county burdens must be raised by uniform taxes on property; but a city can be authorized to raise by corporate taxes the entire money required for a courthouse for the county: *Callam v. Saginaw*, 50 M. 7.

47. A tax must be uniform in a township: *Michigan Land, etc. Co. v. Republic*, 65 M. 628.

48. Water-pipe assessments on vacant lots must be uniform and are not apportionable by frontage: *Jones v. Detroit Water Commissioners*, 34 M. 273.

49. The principle of uniformity is not infringed by exempting property from taxation or by remitting taxes: *People v. Auditor-General*, 7 M. 84.

50. The tax on dogs (H. S. § 2123) is an exertion of the police power, and is not void because not laid according to any principle of uniformity nor assessed by cash value: *Van Horn v. People*, 46 M. 183.

51. The rule of uniformity forbids double taxation. No one can be twice assessed upon the cash value of the same property to defray a public burden, but double taxation (not bearing on the same person) is not necessarily unconstitutional: *People v. Sanilac Supervisors*, 71 M. 16.

52. Taxing an individual owner's cars and the railroad companies for earnings, held not to be duplicate taxation and not to violate rule of uniformity: *Comstock v. Grand Rapids*, 54 M. 641.

53. Taxes may be levied on peculiar classes of business or upon those who are engaged therein, without regard to valuation or amount of business done: *Walcott v. People*, 17 M. 68; *Kitson v. Ann Arbor*, 26 M. 325; *Youngblood v. Sexton*, 32 M. 406.

As to apportionment, etc., of assessments for local improvements and condemnations,

see CONSTITUTIONS, §§ 346-360; CITIES, ETC., §§ 209-223, 355-357.

(e) *Strict compliance.*

54. The authority to tax being fixed by the statute must be strictly pursued: *Case v. Dean*, 16 M. 12.

55. The statutory mode of levy and collection must be followed: *Ryerson v. Laketon*, 52 M. 509.

56. Statutes for the assessment and collection of taxes, as to what they require to be done for the protection of the tax-payer, are mandatory, and cannot be regarded as directory merely: *Clark v. Crane*, 5 M. 151.

57. All legislative provisions adopted for the protection of the tax-payer and to shield him from unequal and unjust burdens are mandatory: *Sibley v. Smith*, 3 M. 486; *Steckert v. East Saginaw*, 22 M. 104; *Seymour v. Peters*, 67 M. 415.

58. Those provisions of the tax laws a departure from which would be prejudicial to the owners of the property taxed cannot be held to be merely directory: *Houghton County v. Auditor-General*, 41 M. 28.

59. A tax is void unless all the essential conditions and requirements precedent to its levy have been observed: *Scofield v. Lansing*, 17 M. 437.

60. Enactments prescribing the course of proceedings in tax matters cannot be considered as directory merely, and not mandatory, where that which is required to be done is in the nature of a condition precedent to subsequent action: *Hoyt v. East Saginaw*, 19 M. 39.

61. Statutory provisions in relation to the description of property for purposes of taxation and deeds on tax-sales are mandatory: *Amberg v. Rogers*, 9 M. 333; *King v. Potter*, 18 M. 134.

62. All statutes are mandatory which expressly or by implication limit the amount of taxes that may be levied: *Boyce v. Sebriny*, 66 M. 210.

63. One's title to his property cannot be divested under the tax law without full compliance with all the substantial requirements of the statute: *Maxwell v. Paine*, 53 M. 80.

64. The statutory requirement as to assessment at cash value cannot be dispensed with: *Hogelskamp v. Weeks*, 37 M. 422.

65. In order to invalidate a tax for non-compliance with a requirement that is directory, it must be shown that injury has resulted therefrom to the person assessed: *Fay v. Wood*, 65 M. 390.

(f) *Irregularities and defects; presumptions; curative acts.*

66. A tax is not invalidated by omissions or irregularities in assessment, etc., that are not jurisdictional or prejudicial (H. S. § 1165; § 84 of act 9 of 1882; § 89 of act 153 of 1885): *Pillsbury v. Auditor-General*, 26 M. 245; *Stockle v. Silsbee*, 41 M. 615; *Peninsula Iron Co. v. Crystal Falls*, 60 M. 510; *Petrie Lumber Co. v. Collins*, 66 M. 64; *Michigan Dairy Co. v. McKinlay*, 70 M. 574 (June 8, '88); *Hill v. Graham*, 72 M. — (Nov. 28, '88).

67. Said H. S. § 1165 should receive a construction carrying out the evident intent of the legislature: *Albany, etc. Mining Co. v. Auditor-General*, 87 M. 391.

68. An error which does not tend to increase a tax, but rather to reduce it below its due proportion, constitutes no injury to the tax-payer, and cannot be set up by him as a ground for invalidating a sale: *Case v. Dean*, 16 M. 12.

69. Where one's property has been seized upon items inserted in the collection roll unofficially and without authority of law, the error is not cured by H. S. § 1165: *Ferton v. Feller*, 38 M. 190.

70. The tax-collector's failure to sign and verify his return of unpaid taxes is not a "want of matter of form in any matter not affecting the merits of the case:" *Upton v. Kennedy*, 36 M. 215.

71. H. S. § 1165 requires that a tax be presumed to have been legally assessed until the contrary is affirmatively shown: *Hunt v. Chapin*, 42 M. 24.

72. Where the board of supervisors had ordered state and county taxes spread upon the rolls, it was held that the fact that township, school and highway taxes were added by the supervisor without the direction of the board would not invalidate the tax-title unless it was affirmatively shown that they were not duly authorized: *Ibid*.

73. A township tax exceeding the amount voted by the township may be sustained on the presumption that the township board had exercised its statutory right to increase the amount, if there is no showing to the contrary: *Silsbee v. Stockle*, 44 M. 561.

74. A bridge and highway tax is not to be presumed invalid for exceeding the percentage on the assessed valuation allowed by law, if it does not also appear that it was not authorized under H. S. § 483, subd. 15, by the board of supervisors: *Stockle v. Silsbee*, 41 M. 615.

75. A surveyor's tax included in a township levy is presumptively lawful, as H. S.

§ 624 allows such a burden in some cases upon particular parcels of land to meet the cost of their survey: *Silsbee v. Stockle*, 44 M. 561.

76. A tax-title cannot be held invalid on the ground merely that some of the lands in the township were not assessed for taxes for the year, where there is no showing that such lands were worth anything during that time, and where, on the other hand, certain classes of real estate were exempt from taxation. It will be presumed that the assessors did their duty in omitting the lands: *Perkins v. Nugent*, 45 M. 156.

77. It was formerly presumed that if a paper required in tax proceedings — e. g., a certificate necessary to authorize a tax for a county agricultural society — could not be found in the proper place, such paper never existed; and such presumption stood until rebutted: *Hall v. Kellogg*, 16 M. 185.

78. But now, under H. S. § 1165, the presumption is the other way: *Hogelskamp v. Weeks*, 87 M. 422.

79. A tax in aid of a county agricultural society is sustained by the presumption that the proper certificate was presented by its officers to the board of supervisors: *Silsbee v. Stockle*, 44 M. 561.

80. And such presumption is not rebutted by a supervisor's testimony that he had no recollection whether the certificate had been presented to the board or not: *Ibid*.

81. A finding that a highway commissioner's report to the township board is "not to be found" is not sufficient to rebut the presumption raised by H. S. § 1165 that it was made: *Stockle v. Silsbee*, 41 M. 615.

82. The presumption raised by H. S. § 1165 that a necessary paper was attached to a roll is overcome where roll appears with paper unsigned: *Dickison v. Reynolds*, 48 M. 158.

83. Ejectment was brought against a tax purchaser of land which was taxed at \$1.63 but was sold for a charge of \$1.94. The record did not show whether the additional 23 cents was charged as a penalty under the name of interest or for some other purpose; and it did not exclude the possibility that it was made up of legitimate charges for the cost of advertising, sale and conveyance. Held that, in the absence of a clear showing to the contrary, it would be assumed that the charge was lawfully made: *Drennan v. Beierlein*, 49 M. 272.

Further as to presumptions in favor of tax-deeds, see *infra*, IX, (d).

84. The legislature can cure irregularities in proceedings for the assessment and collection of any taxes that are authorized by law;

but a curative statute cannot make a void tax a lien: *Hart v. Henderson*, 17 M. 218.

85. A sale which, in the contemplation of H. S. § 1165, is to be upheld must be one made as required by law, and effectuated by such a deed as the law contemplates, having a lawful return to support it. A sale based on the tax collector's unsigned and unsworn return is void: *Upton v. Kennedy*, 86 M. 215.

86. The tax law of 1869, as its title indicates, was passed to regulate the assessment, collection, etc. of taxes for the future; and, therefore, § 164 thereof (H. S. § 1166) was not intended to relate to and make good sales previously made: *Clark v. Hall*, 19 M. 356; *Seymour v. Peters*, 67 M. 415.

87. A tax void for want of jurisdiction to levy it cannot be validated by statute: *Houseman v. Kent Circuit Judge*, 58 M. 364.

88. An assumed tax must be a tax in fact, or it cannot be validated by a statute; if what has been levied under the name of a tax is a mere arbitrary demand, the legislature cannot indirectly compel its payment: *Sinclair v. Learned*, 51 M. 335.

89. Statutory legalization of a tax-roll and healing defects therein cannot affect an existing judgment in trespass against officers for seizure and sale: *Moser v. White*, 29 M. 59.

90. The legislature may enact that omission of or defects in certificate to assessment roll shall not prejudice tax: *Sinclair v. Learned*, 51 M. 335.

91. But an assessment roll bearing a defective certificate cannot be legalized after sale made and suit brought therefor: *Daniels v. Watertown*, 61 M. 514.

92. Nor can a sale made under a statute that could not authorize it be retrospectively validated: *Hall v. Perry*, 73 M. — (Nov. 1, '88).

93. Notwithstanding the curative provisions of H. S. § 1165, a tax-sale for a sum that includes an illegal levy with other taxes that are legal is void: *Silsbee v. Stockle*, 44 M. 561.

94. Whether an assessment in one township of lands in another can be cured by a subsequent statute is doubtful; acts 365 and 366 of 1879, pp. 163, 169, held not to attempt to legalize such an assessment: *Taylor v. Youngs*, 48 M. 268.

95. A statute directing the board of supervisors to levy certain taxes for the payment of certain orders, taxation for which had become impracticable by reason of judicial decisions, was not regarded as a curative statute and was held invalid: *Butler v. Saginaw Supervisors*, 26 M. 22.

(g) *Specific taxes.*

96. Specific taxes are such as are laid upon certain classes of business or pursuits: *Jones v. Detroit Water Commissioners*, 84 M. 276.

97. Assessments for water pipes laid in front of vacant lots are not specific taxes: *Ibid.*

98. Specific taxes, which, though levied by general law, are devoted to local purposes, are not state taxes such as Const., art. 14, § 1, requires to be applied to educational uses: *Youngblood v. Sexton*, 32 M. 406.

99. Specific taxes other than those enumerated in Const., art. 14, § 10, may be imposed: *Walcott v. People*, 17 M. 68.

100. Specific taxes may be imposed not only upon domestic but upon foreign corporations; also upon partnerships and the business of individuals: *Ibid.*

101. Local specific taxes may be imposed on a business or occupation: *Kitson v. Ann Arbor*, 26 M. 325; *Youngblood v. Sexton*, 32 M. 406.

102. Specific taxes may be levied upon business as such without regard to valuation: *Walcott v. People*, 17 M. 68; *Kitson v. Ann Arbor*, 26 M. 325.

103. An act imposing a specific tax is not void for not providing for the appropriation of the tax where that is fixed by Const., art. 14, § 1: *Walcott v. People*, 17 M. 68.

104. A specific tax obliging mining companies to pay more upon mineral obtained in the state and exported unsmelted than on that which is smelted here is void: *Jackson Mining Co. v. Auditor-General*, 32 M. 488.

105. State cannot tax the business of importing, etc., liquors at wholesale into this state: *Walling v. Michigan*, 116 U. S. 446 (reversing *People v. Walling*, 53 M. 264). See CONSTITUTIONS, §§ 400-402.

106. The specific tax imposed by H. S. § 8719 on gross receipts within the state of foreign express companies is valid: *Walcott v. People*, 17 M. 68.

As to specific taxes on railroads, banks, etc., see *infra*, II, (b), (c), (d).

As to taxes upon liquor dealers, etc., see INTOXICATING LIQUORS, §§ 6-14, 26-28, 101-109; MANDAMUS, §§ 196, 206.

Appeal from assessment of specific taxes, see *infra*, § 244.

II. WHAT TAXABLE; EXEMPTIONS.

(a) *In general.*

107. A vessel enrolled and licensed or registered under the United States navigation

laws does not, by engaging in business within a state, become subject to its taxing power if its owner is a non-resident: *Roberts v. Charlevoix*, 60 M. 197.

108. Vessels belonging to a non-resident corporation, but lying in a harbor of this state, are not taxable under the statute of 1885; and the fact that they are taxed improperly does not prevent a resident owner of stock in such corporation from being assessed for such stock in the township where he resides: *Graham v. St. Joseph*, 67 M. 652.

109. Interest acquired under contract made by the state may be subjected to taxation; so held of interest acquired under certificate of purchase of state swamp lands: *Robertson v. State Land Office Com'r*, 44 M. 274.

110. Lands in Michigan for which patent certificates had been issued by the federal land-office were held liable to state taxation at their full value as the property of the purchaser, though no patent had been issued: *Carroll v. Safford*, 3 How. (U. S.) 441.

111. Railroad-grant lands are taxable after the state has executed its trust and after the railroad company has perfected its title and acquired the right to sell: *Tucker v. Ferguson*, 22 Wall. (U. S.) 527.

112. Manuscript books of abstracts of land titles are not taxable: *Perry v. Big Rapids*, 67 M. 146.

113. Securities — e. g., mortgages — representing values may be taxed, while at the same time the land is also taxed: *People v. Sanilac Supervisors*, 71 M. 16.

114. Act 262 of 1887, providing for reporting of mortgages by the registers of deeds to the supervisors and assessing officers, sustained: *Ibid*.

115. Where one owns cars which he is accustomed to load with his goods and then to have them moved for him by railroad companies at agreed rates, he must pay taxes thereon, although such companies are taxed in respect of their own earnings; here is no duplicate taxation: *Comstock v. Grand Rapids*, 54 M. 641.

116. And such cars are assessable to the owner by value; the special tax imposed by H. S. § 1229 on freight lines or car-loaning companies does not apply, although, in fixing the compensation, the railroad companies allow such owner for wheelage: *Ibid*.

117. The business of dealing in intoxicating liquors is taxable even while the constitution forbids licensing the liquor traffic; a tax is not a license: *Youngblood v. Sexton*, 82 M. 406; *People v. Walling*, 58 M. 264.

(b) *Taxation of railroad companies.*

118. The state cannot tax gross receipts of railroads for carriage of freights and passengers into, out of or through its limits: *Fargo v. Stevens*, 121 U. S. 230 (reversing *Fargo v. Auditor-General*, 57 M. 598). See CONSTITUTIONS, §§ 403-405.

119. The Lake Shore & Michigan Southern Railroad Company is not a corporation formed under the general railroad law, and as to that portion of its road in Michigan it is taxable on the basis defined in the special charter of the Michigan Southern Railroad Company, which, with the Northern Indiana Railroad Company, with which it was authorized to consolidate, with no change of taxation, forms a part of the Lake Shore & Michigan Southern Company: *State Treasurer v. Auditor-General*, 46 M. 224.

120. A state cannot tax the whole track and equipments, the gross earnings or the entire capital stock of a road which lies partly without its boundaries and is partly operated in other states. It can only tax that part of the road property which lies within its jurisdiction, or the proportion of stock representing that part of the road: *Ibid*.

121. A foreign railroad corporation formed by the consolidation of lines partly within and partly without the state is not to be taxed, under the tax law of 1882, as if its roads constituted a single line that ran partly without the state and derived its powers from the state law. It is taxable only in proportion to its Michigan road: *Chicago & N. W. R. Co., v. Auditor-General*, 53 M. 79.

122. A railroad company incorporated prior to the revision of the statutes in 1846, whose charter is silent as to taxation, is liable to pay the specific tax imposed by R. S. ch. 21, § 5, p. 121: *People v. Detroit & P. R. Co.*, 1 M. 458.

123. Under the charter of the Michigan Southern Railroad Company — which subjects the company to an annual tax of three-fourths of one per cent. upon its capital stock paid in, including the \$500,000 purchase money, and also upon all loans made to the company for the purpose of constructing their road, or purchasing, constructing, chartering or hiring of steamboats authorized by the charter — the company cannot claim exemption from taxation on sums of money paid out for commissions and other expenses attending the sale of its bonds and the obtaining of loans: *Michigan Southern & N. I. R. Co. v. Auditor-General*, 9 M. 448.

124. Nor can the said company claim exemption from taxation upon any sum of money borrowed by it and afterwards loaned upon worthless securities, whereby it became lost to the company: *Ibid*.

125. But a deduction from the taxable amount should be made of bonds of the said company which were loaned and for which worthless securities were afterwards received in payment: *Lake Shore & M. S. R. Co. v. People*, 46 M. 193. (The company was held liable to taxation upon this item in *People v. M. S. & N. I. R. Co.*, 4 M. 398, upon the facts as there presented, upon the presumption that the bonds received were the equivalent of those issued; but in *M. S. & N. I. R. Co. v. Auditor-General*, 9 M. 448, where it affirmatively appeared that the bonds received were of no value, the court was equally divided.)

126. The discount on lands sold at less than par should also be deducted from the taxable amount: *L. S. & M. S. R. Co. v. People*, 46 M. 193. (The court held otherwise in 4 M. 398, and was equally divided on the question in 9 M. 448.)

127. No deduction should be made for the 3,000 shares of capital stock alleged by the company to have been distributed as a bonus among the original stockholders without any consideration being received therefor—the allegation not being sustained by the facts in the case: 4 M. 398; 9 M. 448.

128. Stock dividends and issues of stock proportioned to that previously held by shareholders must stand on the same footing with original stock, and should be taxed as far as it is considered paid in: *L. S. & M. S. R. Co. v. People*, 46 M. 193.

129. The act authorizing the consolidation of the Michigan Southern Railroad Company with the Northern Indiana Railroad Company provides that said corporation shall continue subject to the same rate of tax as though such consolidation should not take place; and the amount of its capital and loans thereafter, upon which such taxation should be paid, should be such portion of its capital and loans as is actually employed in the state of Michigan. It was held that the act of consolidation was not designed to change the principle of taxation fixed by the original charter of the Michigan company, but that all the stock and loans formerly taxable were to continue taxable without diminution by losses or unproductiveness. And that therefore no deduction can be made from the amount taxable for the cost of steamboats destroyed by accident, or lying idle within the limits of another state and taxable there. The term "actually

employed in the state of Michigan," in the act of consolidation, has no reference to the actual use of the property purchased by the company, but is merely designed to distinguish the Michigan investment from the Indiana investment: *M. S. & N. I. R. Co. v. Aud. Gen.*, 9 M. 448.

130. The tram-railway act prescribes the rate and manner of taxing such railway companies, but elsewhere provides that the act may be at any time amended or repealed, though this shall not alter the corporate rights of companies formed under it. The subsequent tax law changed the mode of taxation, but the other clause was not disturbed. Held, that the companies came within the tax law, and that the term *corporate rights*, used alone, meant only such essential and fundamental rights as attach to corporations, and did not include incidental privileges and immunities, such as a special standard of taxation: *Detroit Street R. Co. v. Guthard*, 51 M. 180.

131. H. S. § 3516 (repealed by act 6 of 1882), which provided that the specific tax therein laid should be "in lieu of all other taxes upon all the property of" a company formed under the tram-railway act, precluded ordinary taxation on property assessed, but did not preclude liability to pay the tax on dogs imposed by § 2123: *Hendrie v. Kalthoff*, 48 M. 306.

132. Where a statute requires a corporation to be taxed at a certain rate upon its capital and on loans employed in the state, and the auditor-general merely computes the amount of the tax on the basis of reports made to him by the company, but without passing judgment upon their correctness, the state is not precluded from enforcing payment of the correct amount: *Lake Shore & M. S. R. Co. v. People*, 46 M. 193.

133. A foreign company with which a local one had been consolidated reported its receipts in gross, without discriminating between its own roads and roads leased by it, and was assessed as if it constituted a single line. Held, that it was not estopped by the report from disputing the assessment: *Chicago & N. W. R. Co. v. Auditor-General*, 53 M. 79.

134. Where a statute after laying upon a railroad company a specific annual tax of one per cent. on the cost of the road, and reserving a right to impose a further tax upon gross earnings, enacted that "the above several taxes shall be in lieu of all other taxes to be imposed within" the state, held, that the statute imposed a tax in reference to the railroad itself, and did not preclude the taxation of lands owned by the company not used or necessary in operating the road, but which it

had mortgaged to pay the cost of building the road, and which it was holding for sale: *Tucker v. Ferguson*, 23 Wall. (U. S.) 527.

(c) *Taxation of banks and bank stock.*

135. Under a statute providing, as the tax law of 1883 provided, that, except as to real estate, all taxation of state banks shall be against the shareholders, a savings bank is not liable to taxation as a corporation for its bank fixtures and surplus of property beyond its nominal capital stock, where its shareholders have been taxed upon their shares: *Lena-wee County Savings Bank v. Adrian*, 66 M. 273 (June 9, '87).

136. Specific taxation by the state of national banks upon capital stock paid in is void: *Smith v. First National Bank*, 17 M. 479; *First National Bank v. Watkins*, 21 M. 488.

137. U. S. Rev. St. § 5219, which allows state taxation of national bank stock if at no greater rate than is assessed upon other moneyed capital in the hands of citizens of the state, is not infringed by the provisions of H. S. § 1003, providing merely for deduction of debts from credits, and not allowing shareholders to deduct the amount of their debts from the value of their stock: *First National Bank v. St. Joseph*, 46 M. 526.

138. H. S. § 1008, providing for the taxation of national bank stock in the township or city where the bank is located, except that where a stockholder resides in another township in the same county he is taxable in his own township, is valid: *Howell v. Cassopolis*, 85 M. 471.

139. And a village (Cassopolis) charter in authorizing the taxation of "all property, real and personal, within the limits of said village," not exempt from taxation, for county and township purposes, does not allow the village to tax the shares of bank stockholders who reside in another township in the same county: *Ibid*.

(d) *Taxation of insurance companies.*

140. A mutual life insurance company undertook to insure at actual cost, but set down in its policies a maximum premium exceeding the usual annual cost, and adjusted the matter by allowing an offset to the premium each year of an amount equal to the excess of the maximum premiums of the year before over the actual cost of insurance for that year; held, that the amount upon which is levied the state specific tax of three per cent. on the premiums collected by the company in Michigan is the sum of the maximum annual pre-

miums as set down in the policies so collected, and not merely the cash balance actually paid over to the company: *Connecticut Mutual Life Ins. Co. v. State Treasurer*, 81 M. 6.

141. H. S. § 4212, authorizing a tax to be collected both on premiums received and on such as within the year "shall have been agreed to be paid (*sic*) for any insurance effected or agreed to be effected or procured," is held to prescribe a substantially different basis of taxation from that supplied by C. L. 1871, § 2951 (see H. S. § 4231), which authorized taxation only on "all premiums received in cash or otherwise." The later rule supplants the earlier for future cases: *Ibid*.

(e) *Exemptions.*

142. A corporate charter containing no stipulation promising exemption from taxation does not preclude subsequent legislation imposing a tax: *People v. Detroit & P. R. Co.*, 1 M. 458.

143. The exercise by the legislature of power (if such power exists) to grant a perpetual exemption from taxation will not be assumed in any case unless the language employed admits of no doubt: *East Saginaw Salt, etc. Co. v. East Saginaw*, 19 M. 259.

144. A statute exempting lands of a railroad company from taxation is not a contract unless based on a consideration; if not so based, it is revocable at pleasure; and the presumptions are against the existence of a contract for exemption: *Tucker v. Ferguson*, 23 Wall. (U. S.) 527.

145. A statute exempting from taxation property employed in a certain manufacture, when made by way of bounty to encourage such manufacture, is subject to repeal: *East Saginaw Salt, etc. Co. v. East Saginaw*, 19 M. 259, 18 Wall. (U. S.) 873.

146. Legislation exempting for a limited period unsold state swamp lands given in aid of a canal or of a railroad is valid; nor can the courts inquire into the consideration for legislative exemption from taxation: *People v. Auditor-General*, 7 M. 84; *Chippewa Supervisors v. Auditor-General*, 65 M. 408.

147. Whether an agreement for a sale of lands by the usual executory contract—the title to be conveyed when the purchase price is paid—constitutes a sale within the meaning of the act of the legislature of Feb. 12, 1858, exempting lands donated for the construction of the Sault St. Marie Canal from taxation for five years, except as to any portion sold, *quere*: *People v. Auditor-General*, 7 M. 84.

148. In act 86 of 1873, authorizing the board of control of state swamp lands to make an appropriation of such lands in aid of a railroad, "the full power and authority over said lands, the reservation necessary, and the privileges requisite in the application of such lands to such a purpose" were given, with a proviso that the lands should become taxable as soon as earned. *Held*, that the intent was clear that the board could contract to exempt from taxation such lands while unsold: *Chippewa Supervisors v. Auditor-General*, 65 M. 408.

149. Said act of 1873 was entitled so as to cover the exemption clause, nor was the amendatory act of 1875 (p. 119) a departure from the former statute so as to render the title inapplicable: *Ibid*.

150. The compact under which Michigan was admitted into the Union exempts from taxation certain military bounty lands, while they continue to be held by the patentees and their heirs, "for the term of three years from and after the date of the patents therefor." This language, being clear and unambiguous, must be applied precisely according to its tenor, and cannot be held to mean three years from the location of the land: *People v. Auditor-General*, 9 M. 184. As to rejection of tax on such lands, see *infra*, § 290.

151. The exemption of houses of public worship, etc., from taxation applies only to taxes imposed under the general system of taxation, and does not extend to assessments for paving streets: *Lefevre v. Detroit*, 2 M. 586.

152. It seems that the provisions of R. S. 1846, ch. 20, p. 103, exempting from taxation "all houses of public worship," etc., were not intended to exempt the lot or ground upon which houses of public worship stand: *Ibid*.

153. The exemption from taxation of "the real estate belonging to library, benevolent, charitable and scientific institutions, actually occupied by them for the purposes for which they were incorporated," exempts only such distinct tenements as are actually occupied by such institutions for the purposes of their creation, and not tenements, though under the same roof, which are used for other purposes: *Detroit Young Men's Society v. Detroit*, 8 M. 172.

154. Certain real estate was deeded to a church in fee, "to the end that they might, from time to time as they should deem necessary, erect thereon any buildings or improvements suitable for ecclesiastical, literary or benevolent purposes," and was leased to the Sisters of Charity for thirty years at a nominal rent for charitable purposes, and was

actually occupied for such purposes. Whether the premises, while held and occupied under this lease, are exempt from taxation under the statute as "real estate belonging" to the Sisters of Charity, *quere*; the court being divided: *Sisters of Charity v. Detroit*, 9 M. 94.

155. Exemption from ordinary taxation does not exempt from dog tax: *Hendrie v. Kalthoff*, 48 M. 306.

III. ASSESSMENT.

(a) General matters.

156. A township is not completely organized for the assessment, levy and collection of taxes until officers are elected; and until then the township from which it is set off may levy and collect the taxes: *Comins v. Harrisville*, 45 M. 442.

157. Assessments under the general tax law of 1882 (H. S. pp. 1265-1292) may be sustained; the question of the constitutionality of that statute (about which the court was equally divided in the *State Tax-law Cases*, 54 M. 350) related to proceedings subsequent to the return of delinquent taxes to the auditor-general: *Davenport v. Auditor-General*, 70 M. 192 (May 11, '88); *Humphrey v. Auditor-General*, 70 M. 292.

158. The tax law of 1869 (act 169) was repealed by act 11 of 1882, so far as it related to the assessment of taxes and the steps to collect the same. It remained in force only to protect collection proceedings begun before the repeal, and to protect rights, etc.: *Goodman v. Nester*, 64 M. 662.

159. Under act 228 of 1875 the assessor might add to the assessment roll, during the days fixed by law for a review thereof, the name of any person liable for a liquor tax, and no notice to such person was necessary. Such assessment would be for a full year's tax: *Wood v. Thomas*, 38 M. 686.

160. Report for assessment for tax on company's gross receipts should not estop company in absence of fraud: *Chicago & N. W. R. Co. v. Auditor-General*, 53 M. 79.

161. The fact that the assessment of a township was placed at two different sums, first in the roll as made by the assessor at one sum, and subsequently in the tabular statement of the supervisors at another, is not material, and therefore the roll is not void for that reason: *Tweed v. Metcalf*, 4 M. 579.

As to legalizing assessments, see *supra*, §§ 84-95.

That irregularities in assessments are not reviewed on CERTIORARI, see that title, §§ 23, 24.

(b) *Assessors.*

162. The absence of any record in the town books showing that the assessors were sworn does not furnish *prima facie* evidence that they were not sworn: *Sibley v. Smith*, 2 M. 486.

163. An assessor who has omitted lands from an assessment is presumed to have done so rightly unless the facts exclude such presumption: *Perkins v. Nugent*, 45 M. 156.

164. It seems that an individual tax-payer has no ground of action against a supervisor for assessing property on a false valuation except on the ground of fraud or malice: *Moss v. Cummings*, 44 M. 359.

165. As to what remedy tax-payer has against supervisor who fails to list others' property, *quere: Ibid.*

166. Assessors are entitled to inspect liquor bonds so as to ascertain property of sureties: *Brown v. County Treasurer*, 54 M. 132.

167. A supervisor is not liable in trespass on account of any errors or defects in the description of real estate in the assessment roll. When the roll comes to him properly certified from the board of supervisors he has no right, unless from some defect that renders the whole roll void, to refuse to make out the tax-roll and attach his warrant thereto. He is required to issue this warrant in general form, and cannot notice or except individual cases: *Clark v. Axford*, 5 M. 182.

As to what constitutes justification in such case, see OFFICERS, § 189.

168. A supervisor who issues a warrant to collect a tax duly certified to him is protected unless the certificate on its face apprises him that some of the moneys specified therein are illegal charges, even though he has knowledge outside of such certificate — e. g., by his membership in the town board — of the facts constituting the illegality: *Wall v. Trumbull*, 16 M. 228.

169. A supervisor issuing a tax warrant is held to knowledge of and liability for any illegality manifest on the face of the warrant: *Atwell v. Zeluff*, 26 M. 118.

(c) *Locus of assessment.*

170. By a statute passed in April, but which did not go into effect until September, 1885, land was taken from the township of R. and was added to B., a township in a new county. The supervisor of R. assessed the land as if in B., thereby increasing the rate of taxation, levying the taxes upon statements handed him by B.'s supervisor, which taxes

were collected and paid over to B.'s treasurer. *Held*, that such assessment and levy of the tax for 1885 were unauthorized (see § 97 of tax-law of 1885, act 153), and that in an action against R. to recover back the tax paid under protest R. could not complain if a recovery was allowed for the excess levied upon plaintiff's lands above the township tax-rate above the other real estate in the township: *Michigan Land, etc. Co. v. Republic*, 65 M. 628.

171. An assessment of land as if it were in some other township than that in which it really lies is wholly void, even though made in good faith and in ignorance of the facts: *Taylor v. Youngs*, 48 M. 268.

172. Standing timber is not personal property generally, nor is it a "forest product" within the meaning of the tax-law of 1885, § 11, subd. 4; and though growing upon widely separate tracts and owned distinctly from the land it is to be assessed as realty with the lands whereon it is situated: *Fletcher v. Alcona*, 71 M. — (Oct. 19, '88).

173. Lumber that is brought to a railway station for transit merely, and is kept there in piles for convenience of shipment upon grounds that are neither owned nor hired for the purpose, is not taxable at that place as property in storage: *Monroe v. Greenhoe*, 54 M. 9.

174. Lumber upon the premises of the manufacturer and under a contract of sale to dealers whose place of business is elsewhere is not taxable where it is, as if in a place of "storage," especially if anything remains to be done to complete the transfer to the purchaser: *Osterhout v. Jones*, 54 M. 228.

175. Lumber piled to dry and season upon ground hired by the owners for the purpose, and not intended to be moved until sold, is stored within the meaning of the tax-law of 1882, and is properly taxed in the township where so stored: *Hood v. Judkins*, 61 M. 575.

176. Under H. S. p. 1267, § 11, logs in camp are taxable where the camp is, if there is an office there and buildings for transacting the local business, receiving funds and making returns to headquarters: *Ryerson v. Muskegon*, 57 M. 383.

177. Where a lumber company had its principal office in a metropolitan city, but had no yard, and paid no taxes there, it was proper to tax its lumber in the remote township where, by contract with a company that had its mill and storage room there, it was manufactured and piled on the latter's docks, from which, after remaining until it was seasoned, it was taken by purchasers: *Manistique Lumbering Co. v. Witter*, 58 M. 625.

178. Personal property belonging to a firm must, as a general rule, be assessed for taxation in the township where the business of the firm is principally carried on: *Fletcher v. Alcona*, 71 M. — (Oct. 19, '88).

179. Where the stock of a firm of lumber dealers is sold at their general place of business, but is sawed and shipped elsewhere, it is taxable at the general place of business, and not in the township where it is manufactured: *Putman v. Fife Lake*, 45 M. 125.

180. Logs temporarily left afloat for sawing by a firm whose place of business and the residence of whose partners is elsewhere cannot be assessed in the township where so left: *Torrent v. Yager*, 52 M. 506.

181. Personal property belonging to a partnership is assessable in the locality where it is, if the firm has its place of business there: *Williams v. Saginaw*, 51 M. 120.

182. Township taxes assessed on the personal property of a partnership can only be assessed in the township where the firm has a place of business (H. S. § 1012), and not where the personal property is manufactured and stored, even though small quantities are occasionally sold therefrom at that place: *McCoy v. Anderson*, 47 M. 502.

183. A manufacturer lived in one ward and had a warehouse and stock-in-trade in another, and he also had a number of railway cars which he used in the transportation of his manufactures. The cars were taxed in both wards. *Held*, that they were properly taxable with the stock-in-trade as appurtenant to the business; and as personal property is assessable in gross and specific description of it is surplusage, the enumeration of the cars on the tax-roll could not affect the validity of the assessment, and if it was excessive the owner's remedy was by appeal to the board of review and not by a suit to recover taxes paid under protest: *Comstock v. Grand Rapids*, 54 M. 641.

184. Under act 153 of 1885, § 11, subds. 1 and 2, stock upon a farm is properly assessed where the farm lies, although both belong to a corporation whose principal business office is in another township: *Michigan Dairy Co. v. McKinlay*, 70 M. 574.

185. Under act 153 of 1885, providing that forest products in transit shall be assessed at the place of destination, which, in the absence of testimony to the contrary, shall be deemed to be at the sorting grounds, logs in transit contracted to be sawed at a certain place are properly assessed there and not elsewhere: *Boyce v. Cutter*, 70 M. 539.

186. The tax-law of 1885, § 11, subd. 4, provides that forest products in transit shall

be held to be delivered to the sorting grounds of the booming company or driving agents nearest the mouth of the stream, unless the contrary is made to appear by the owner or party having them in charge. *Held*, that a showing under oath before the assessor or board of review is not necessary, but that any information — as by an agent's letter — is sufficient if it satisfies the officers: *Brooks v. Arenac*, 71 M. — (July 11, '88).

187. A charge upon the question whether logs were in transit or not, so as to determine in what township they were assessable, *held* to be sufficiently favorable to the party objecting to the assessment: *Hill v. Graham*, 72 M. — (Nov. 28, '88).

188. Subds. 6, 4 and 1 of § 11 of act 153 of 1885 are to be construed and stand together in determining where logs belonging to an estate in the hands of an executor or administrator are to be assessed: *Avery v. Dewitt*, 71 M. — (Oct. 19, '88).

189. The tax laws contemplate that the interest held by a purchaser of primary school or swamp lands shall be assessed as personalty, but that the assessment is to be separate from the general valuation of his personal property and must be made in the township where the land lies, irrespective of the owner's residence; and that if the tax cannot be collected by the customary process, his interest in the land shall be forfeited to the state: *Robertson v. State Land Office Commissioner*, 44 M. 274.

190. For purposes of taxation intangible property like stock follows the domicile of the owner unless separated from it by positive law: *Howell v. Cassapolis*, 35 M. 471.

As to where bank stock is to be taxed, see *supra*, §§ 188, 189.

(d) *To whom property to be assessed; resident and non-resident.*

191. Our laws regarding the assessment and collection of taxes have usually had regard to the possession rather than the ownership: *Crane v. Reeder*, 25 M. 303.

192. The resident owner or occupant must be named in the roll: *Lefevre v. Detroit*, 2 M. 586.

193. Land should not be assessed as non-resident simply because the tenant or owner does not have his home upon the premises; certain facts, such as cultivation of the land and residence in the township, *held* to constitute occupancy: *Tweed v. Metcalf*, 4 M. 579; *Burroughs v. Goff*, 64 M. 464.

194. An assessment of lands belonging to

a resident in the non-resident list is invalid: *Rayner v. Lee*, 20 M. 384.

195. Putting resident land on the roll with non-resident lands and grouping and jointly assessing them with other lands belonging to a different person are such defects as will invalidate a tax-title: *Hanscom v. Hinman*, 30 M. 419.

196. The requirement that unoccupied lands not owned by residents and not exempt shall be entered on a separate part of the roll from resident lands is mandatory, and if disregarded avoids tax-titles based on assessments so made: *Seymour v. Peters*, 67 M. 415.

197. Where the statute (H. S. § 1010) permits the property of an estate to be assessed to the heirs or devisees without naming them, an assessment to the estate by name is legally equivalent, and therefore sufficient: *Dickison v. Reynolds*, 48 M. 158.

198. A legatee cannot be assessed for a legacy not yet due and still in the hands of executors; all undistributed estate must be assessed to the executor: *Herrick v. Big Rapids*, 53 M. 554.

199. The assessment of a guardian upon an undistributed legacy to his minor ward is invalid; and the guardian's previous acquiescence in the assessment as a member of the board of review cannot bind the ward: *Barstow v. Big Rapids*, 56 M. 35.

200. The tax law of 1882 (H. S. p. 1267, § 1), declared that "all personal property, except as hereinafter provided, shall be assessed to the owner in the township of which he is an inhabitant;" and further, that "personal property under the control of a trustee or agent . . . may be assessed to such trustee or agent in the town where he resides." Held, that these provisions do not prevent securities belonging to a resident of the state, but in the custody of an agent living in a different town, and separately assessable, from being assessed in part to the owner and in part to the agent. If the same securities are assessed to both, the assessment on the owner takes precedence: *Curtis v. Richland*, 56 M. 478.

201. It is proper to assess lands belonging to a partnership as partnership property instead of to the partners individually as tenants in common: *Hubbard v. Winsor*, 15 M. 146.

202. Partnership property in the hands of a surviving partner for the purpose of closing up the business is properly assessed in the firm name: *Blodgett v. Muskegon*, 60 M. 580.

203. Property of plaintiff, the Petrie Lumber Company, was by mistake assessed for taxes to A. H. Petrie & Co., a copartnership

which had been merged in the plaintiff corporation. The property was not otherwise assessed, nor was the tax claimed to be invalid on other grounds than the assessment to the wrong party. Held, that under § 84 of the tax law of 1882, the error not being prejudicial, was cured; that the tax was a valid one against plaintiff, and as such could be enforced and collected: *Petrie Lumber Co. v. Collins*, 66 M. 64.

204. A farm and the stock thereon were assessed in the alternative to a corporation or its agent, naming both; the agent telling the assessor that it made no difference. The tax was paid for one year without objection, but the second year the corporation refused to pay the tax on the stock, though paying that on the land. Held, that under act 153 of 1885, § 89, the assessment could not be held invalid: *Michigan Dairy Co. v. McKinlay*, 70 M. 574 (June 8, '88).

205. Logs belonging to the firm of James H. Hill & Sons, composed of James H., Wilbur H. and Arthur Hill, were assessed to "James H. & Arthur Hill & Co." The assessment was sustained, it not appearing that the rights of the owners were prejudiced: *Hill v. Graham*, 72 M. — (Nov. 28, '88).

(e) Description of property.

206. C. L. 1857, § 804, provided that, if the tract were less or other than a subdivision of a section authorized by the United States for the sale of the public lands, it might "be described by a designation of the number of the lot or tract or of other lands by which it is bounded." Held, that a description of the land as "the west half of the southwest fractional quarter of section twenty-eight," etc., containing fifty acres, more or less, was insufficient for an assessment where it appeared that the southwest fractional quarter was not subdivided by government, that it contained 100 acres, was of an irregular shape, somewhat resembling a triangle, and was patented as one parcel: *Amberg v. Rogers*, 9 M. 332. See *infra*, § 646.

207. The description must be such that the boundaries and location of the premises can be determined from it; such a description as "Young Men's Society, Gov. & J. P. Jeff. Av, n. 45 feet, w. pt, lot 11, sec. 1, and e. pt, lot 10, sec. 1. B. 2," held void: *Detroit Young Men's Society v. Detroit*, 3 M. 172.

208. An assessment upon St. Peter's cathedral, the roll not describing the lots nor naming the owners or occupants, is void: *Lefevre v. Detroit*, 2 M. 586.

209. The description of lands assessed for taxes by the use of initial letters, abbreviations and figures is sufficient (H. S. § 1023): *Sibley v. Smith*, 2 M. 486.

210. The description of a tract of land as "the N. E. $\frac{1}{4}$, sec. 4, less lots sold," is insufficient. *Hubbard v. Winsor*, 15 M. 146.

211. Where the land in its assessment, instead of being described by the designation of its subdivisions according to the United States survey or by number of lot or tract, etc. (see H. S. § 1023), is described by subdivisions that are not legal or that could not physically exist, such description is uncertain and insufficient: *King v. Potter*, 18 M. 184.

212. The requirement in the tax law of 1843 (L. 1843, p. 66, § 2), that where a tract is not the subdivision of any section authorized by the United States for the sale of public lands the assessment should state the name or number of the lot or tract, or "by what other lands it is bounded," has reference to those cases in which the tract is not known by name or number, and in which such a description would be most likely to attract the attention of the person interested in the payment of such tax: *Gilman v. Riopelle*, 18 M. 145.

213. A description as "that part of private claim 61 lying east of the north branch of the River Ecorse in township 8 S. of R. 11 E.," held sufficient under the tax law of 1843, p. 66: *Ibid.*

214. Under R. S. 1846, p. 105, § 18 (see H. S. § 1023, subd. 4), lots could not be assessed by reference to their numbers merely on an unacknowledged and unrecorded village plat: *Johnstone v. Scott*, 11 M. 232, 240.

215. The description of land on a village tax-roll as the east half of the southeast quarter of a section, omitting to give the section number, is not so defective as to be void when the village contains but one east half of a southeast quarter of a section: *Bird v. Perkins*, 33 M. 28.

(f) Valuation.

216. The constitutional requirement that assessments shall be made on property at its cash value means not only what may be put to valuable uses, but what has a recognizable pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it: *Perry v. Big Rapids*, 67 M. 146.

217. Assessments must be at the true cash value; intentional undervaluation is illegal: *Wattles v. Lapeer*, 40 M. 624; *Attorney-General v. Sanilac Supervisors* 42 M. 72.

218. Const., art. 14, § 12, requiring assessments to be at the true cash value, is as much designed for securing against overvaluation as undervaluation: *Avery v. East Saginaw*, 44 M. 587.

219. The general tax law requiring all property to be assessed for taxation at its true cash value does not necessarily require the assessing officer to assess a mortgage at the amount it purports to secure; he must ascertain, according to his best information, the true cash value of the mortgage, considering whether it was taken merely as an indemnity or to secure the performance of some act other than the payment of money, whether the land is worth less than the face of the mortgage, whether there are prior mortgages, and other contingencies: *People v. Sanilac Supervisors*, 71 M. 16.

220. For the purpose of assessment the note or bond and the mortgage that secures it are considered as one value or property: *Ibid.*

221. Where a library or other similar institution owns under the same roof tenements that are not actually occupied for the purposes of its creation (see *supra*, § 153), together with others that are so used and are therefore exempt from taxation, the proper mode of assessing such property is to exclude that which is exempt in the estimate of the value of the whole estate; and the tax levied thereon will be laid only upon the value of that which is not exempt, though the description of the property embraces the whole: *Detroit Young Men's Society v. Detroit*, 3 M. 173.

222. Proof that by a general understanding of the supervisors assessments were made throughout the county on the basis of a uniform reduction of fifty per cent. from the true value was properly excluded in an action of ejectment when offered to invalidate a tax-deed; such assessment would not injuriously affect the tax, since the proportionate burden would be the same: *Williams v. Mears*, 61 M. 86.

223. Affidavits from supervisors, in answer to an order to show cause, that they had "estimated" the property at its cash value, were not assumed by the court to be evasive: *Attorney-General v. Sanilac Supervisors*, 42 M. 72.

224. Assessing officers must inform themselves as far as possible of the true cash value of each parcel of land assessed, and must not assess non-residents differently from others; but where the extent and inaccessibility of wild land make personal inspection impossible in the time allowed, it will not be assumed that because the lands were to a

great extent valued alike that they were assessed unfairly: *Sawyer-Goodman Co. v. Crystal Falls*, 56 M. 597; *Peninsula Iron, etc. Co. v. Crystal Falls*, 60 M. 510.

225. The listing of taxable property is clerical work; but the ascertainment of its value is judicial, and requires the supervisor's judgment under his official oath: *Woodman v. Auditor-General*, 52 M. 28.

226. The fact that the clerical work of making out an assessment roll was performed by a clerk under the direction of the supervisor, the latter estimating and fixing the valuations without any assistance from the clerk, who simply placed upon the roll the valuations as instructed by the supervisor, does not tend to invalidate the roll: *Peninsula Iron Co. v. Crystal Falls*, 60 M. 510.

227. The valuation of property for taxation is confided to the judgment and discretion of the supervisor, and the courts cannot interfere with a *bona fide* exercise of such judgment though they may think he has erred; but equity will restrain the collection of so much of a tax upon land as is caused by a corrupt or intentional overvaluation of the property: *Merrill v. Auditor-General*, 24 M. 170.

228. Valuations on assessment for taxation are not questions suitable for a court or jury: *Mead v. Lansing*, 56 M. 601.

(g) Review of assessments.

229. The general tax law allows no change of valuation except on a proper examination; and no valuation is final until there has been an opportunity of investigating it on the taxpayer's part: *Avery v. East Saginaw*, 44 M. 587.

230. Every tax-payer was entitled, under H. S. § 1020, to an opportunity to see how his property has been assessed and to show that the assessment was illegal or unjust: *Woodman v. Auditor-General*, 52 M. 28.

231. The tax-payer has "his day in court" before the board of review of assessments; he cannot complain that a subsequent statute cuts off the review in chancery provided for by the act of 1882: *Davenport v. Auditor-General*, 70 M. 192.

232. If a tax-payer does not have the assessment of his property corrected and perfected when it is in his power to do so he must be assumed to admit its correctness: *First National Bank v. St. Joseph*, 46 M. 526.

233. Whether an assessment is excessive is not a question for the courts to try where the statute has provided a board of review: *Williams v. Saginaw*, 51 M. 120.

234. To obtain relief where an assessment of personalty is merely excessive, not void for want of jurisdiction, one should appeal to the board of review; his remedy is not by a suit to recover back the tax after payment: *Comstock v. Grand Rapids*, 54 M. 641.

235. One who is aggrieved by an assessment, but who fails to appear before the board of review, cannot assail the assessment in the courts unless he can show that the supervisor or the board acted fraudulently: *Peninsula Iron, etc. Co. v. Crystal Falls*, 60 M. 510.

236. But one is not bound to notice or to appeal from an assessment of personal taxes against him if jurisdiction to assess them did not exist: *Williams v. Saginaw*, 51 M. 120.

237. The power of the board of review in Bay City, under act 807 of 1869, § 42, to review a valuation of property, arises only where an application is made for that purpose by the party concerned: *Griswold v. Bay City School District*, 24 M. 262.

238. Sworn evidence is not essential unless called for by the board, which can act upon personal examination or on any evidence it deems satisfactory: *Ibid.*

239. When a board of review has once acted and reduced an assessment its action becomes final and cannot be changed, if at all, without new notice: *Griswold v. Bay City School District*, 24 M. 262; *Phillips v. New Buffalo*, 64 M. 683. Nor need such action be proved intentionally fraudulent to authorize recovery back: 64 M. 683.

240. An assessment cannot be raised by a city board of review without notice to the taxpayer: *Avery v. East Saginaw*, 44 M. 587.

241. And notice of the review for the general assessment roll will not avail as notice for the review of a special assessment roll that is distinct from the other: *Dool v. Cassopolis*, 42 M. 547.

242. A notice which by clerical error fixed Sunday as a day for hearing objections to the assessment of a tax is not binding, but the defect can be waived by taking extension of time for payment or by voluntary payment: *Louden v. East Saginaw*, 41 M. 18.

That the absence from the record of necessary action in regard to posting notices of meeting of board of review may be shown by the testimony of a witness who has examined the records, see EVIDENCE, § 1049.

243. One who has filed a protest with the city board of review against being assessed for logs in transit not destined for the city is not estopped by an inadvertent statement made before the board from showing the facts of the case when seeking to recover his prop-

erty seized for the illegal tax: *Boyce v. Cutter*, 70 M. 539.

244. On an appeal under H. S. § 1253 from the auditor-general's assessment of specific taxes, the circuit court is merely an appellate tax tribunal; its conclusion is not a judgment but an assessment, and is not reviewable on error: *Auditor-General v. Pullman Palace Car Co.*, 84 M. 59.

(h) *Signing roll; certificate.*

245. R. S. 1838, p. 82, § 11, required the assessors to sign the roll when completed. This was mandatory, and if not done the roll was void. The assessors' signatures to the certificate attached to the roll would not suffice, as that certificate is no part of the roll: *Sibley v. Smith*, 2 M. 486; *Lacey v. Davis*, 4 M. 140.

246. But under the law of 1842, p. 85, the want of signature to the roll was no objection, the certificate being the only authentication required: *Lacey v. Davis*, 4 M. 140.

247. A requirement that the board of review should sign the assessment roll after completing it was *held* complied with where the members signed a communication to the common council certifying that the board had completed the review, correction and approval of the roll, which communication was pasted to the roll: *Darmstaetter v. Moloney*, 45 M. 621.

248. The presumption that official action has been regular applies to support the supervisor's certificate to an assessment roll as not prematurely signed, though dated upon the last of the three days allowed by statute for reviewing the roll; the roll is open for review until five o'clock in the afternoon of the third day, but the certificate can be signed after that hour: *Yelverton v. Steele*, 36 M. 62.

249. The fact that a supervisor's certificate to an assessment roll is dated before the day of review, when parties have a right to appear and be heard on their assessments, is not important. The date may be an error, and if not, the review may nevertheless have taken place: *Dickison v. Reynolds*, 48 M. 158.

250. Where the certificate that the statute requires shall be attached to the assessment roll is attached but not signed, the defect is fatal: *Ibid.*

251. Where an assessment roll was objected to as wanting a certificate, and it was claimed that the appearance of the roll showed that there had been one or more leaves detached, *held*, that a question of fact was raised as to whether the roll lacked a certi-

cate when returned to the county treasurer, and whether, when delivered to the supervisor, it was properly certified: *Fay v. Wood*, 65 M. 390.

And see *infra*, § 266.

252. Though it may not be necessary that the certificate use the exact words of the statute, a substantial conformity is necessary: *Hogelskamp v. Weeks*, 37 M. 422; *Day v. Cole*, 65 M. 129, 154.

253. H. S. § 1025 requires a supervisor, on completing an assessment roll, to certify in effect that he "has set down all the real estate liable to be taxed according to his best information," and that "the roll contains a true statement of the aggregate valuation of the taxable personal estate." A supervisor omitted the italicised words and certified that he had set down the real estate "according to his best [judgment and] information." *Held*, that these variations from the authorized form did not invalidate the certificate: *McCallum v. Bethany*, 42 M. 457.

254. A tax-title is invalid if the assessor's certificate attached to the roll under which the tax was levied materially differed from that prescribed by statute at the time the tax was levied. So *held* where a statutory form permitting the assessor to rely upon the sworn valuation made by the tax-payer was followed after the statute had been amended so as to require the assessor himself to estimate the value of the property: *Crooks v. Whitford*, 47 M. 288.

255. Where the assessor in Detroit appended to the roll a certificate according to the form required by the general tax law (C. L. 1857, § 806) at the time the city charter went into effect, but omitting the statement added by the later tax law (H. S. § 1025) such certificate was *held* sufficient; but *held* further, that no certificate was needed to authenticate the roll to the board of review, as the assessor was himself a member of the board and the official bearer of the roll thereto: *Darmstaetter v. Moloney*, 45 M. 621.

256. Where a city charter requires special assessments to be made by commissioners, and provides for a return to the common council, they must certify in some way upon the roll the basis upon which the assessment was made; their bare signatures to the roll, or the oath taken by them at the outset, is not enough to sustain the tax: *Grand Rapids v. Blakely*, 40 M. 367.

Certificate to assessment roll for local improvement must show that assessments have been made in proportion to the benefits: See CITIES AND VILLAGES, § 218.

257. A certificate of the assessors which states that they have estimated the real estate "at a sum which, for the purposes of assessing, we believe to be the true value thereof," instead of "at what we believe to be the true cash value thereof," as required by law, is fatally defective: *Clark v. Crane*, 5 M. 151.

258. Omission in such certificate of word "cash" from "true cash value" is fatal and avoidstax deed: *Hogelskamp v. Weeks*, 87 M. 422.

259. A tax is illegal if the certificate to the assessment roll fails to state that the valuation of the property assessed was "not at the price it would sell for at a forced or auction sale:" *Silsbee v. Stockle*, 44 M. 561; *Sinclair v. Learned*, 51 M. 335; *Daniels v. Watertown*, 55 M. 376; *Westbrook v. Miller*, 64 M. 129.

260. The omission of the italicised words from the required statement "the true cash value thereof, and not at the price it would sell for at a forced or auction sale," avoids the assessment: *Gilchrist v. Dean*, 55 M. 244.

261. Omission of the words "true" and "auction" avoids the assessment: *Dickison v. Reynolds*, 48 M. 158.

262. Omission of the word "true" before "cash value" in certifying to land held shown to be a clerical error and not fatal, where, in another part of the same certificate, the personalty was certified to as assessed at its "true cash value as aforesaid:" *Ibid.*; *Fay v. Wood*, 65 M. 390.

263. A tax-sale is fatally defective if based on a supervisor's certificate that he had "estimated the property at what he believed to be the cash value thereof, as is customary by assessors:" *Hurd v. Raymond*, 50 M. 389.

264. Where the proper certificate appears on the roll it cannot, in a collateral proceeding, be contradicted, e. g., to show an undervaluation: *Blanchard v. Powers*, 42 M. 619; *Gamble v. East Saginaw*, 43 M. 367.

265. Assessments with the certificate of the assessor or board of review attached are admissible in proof of the regularity of tax-deeds, where the tax or collection roll fails to show that such certificates were made: *Fells v. Barbour*, 58 M. 49.

266. The tax-roll for 1872 was introduced in evidence, but it contained no certificate of the supervisor. It was claimed that the roll had been mutilated and some of its leaves cut out, but there was no proof that the roll ever contained such certificate or that the missing portions contained it. Held, that there could be no presumption that the roll ever contained such certificate: *Newkirk v. Fisher*, 72 M. — (Oct. 26, '88).

See *supra*, § 251.

(i) Equalization.

That duties of board of supervisors as prescribed in H. S. § 324 are sufficiently expressed by statute's title, see CONSTITUTIONS, § 598.

267. The object of the equalization is to obtain a just basis for the apportionment of the state and county tax among the townships: *Boyce v. Sebring*, 66 M. 210.

268. Equalization under R. S. 1838, p. 83, § 14: *Sibley v. Smith*, 2 M. 486.

269. The equalization is only between the respective townships; the board has nothing to do with the equalization of real estate as between individuals, and taxes are to be assessed upon the valuation in the roll as they were before the equalization: *Tweed v. Metcalf*, 4 M. 579.

270. And the equalization is confined to real estate. Valuations of personal estate remain as fixed by the assessors: *Case v. Dean*, 16 M. 12.

271. But while the statute contemplates an equalization as between the townships with reference to real estate only, it does not assume that the assessments of real and personal estate made by any supervisor are relatively equal or unjust, and therefore it does not change or disturb them, but leaves the burden or benefit of any increase or diminution made in the total assessment of a township to be shared alike by both realty and personalty; and if the supervisor, in apportioning an increase, distributes it upon the real estate only, the tax is excessive and a title based thereon void: *Sinclair v. Learned*, 51 M. 335.

272. The statute contemplates that the additions or deductions, arising because the relative valuations of real property are disproportionate, will be made to or from the aggregate valuation of all the taxable property, personal as well as real, in the particular township: *Silsbee v. Stockle*, 44 M. 561; *Boyce v. Sebring*, 66 M. 210.

273. Under the act of 1848, p. 67, § 20, the aggregate of equalized valuations might be reduced below that of the assessors: *Tweed v. Metcalf*, 4 M. 579.

274. The board has complete power over the subject of equalization and may adopt its own means of reaching the result: *Case v. Dean*, 16 M. 12.

275. When the board alters the aggregate valuation of the real estate, the additions or deductions made may be expressed in any form which by calculation may be reduced to percentage: *Ibid.*

276. Equalization on the basis of a uniform reduction of fifty per cent. from the true value

does not vitiate a tax, because the proportionate burden remains the same: *Williams v. Mears*, 61 M. 86.

277. The valuations of real estate adopted for the year by the equalizing board are conclusive, and cannot be invalidated by showing that the board adopted an erroneous footing or aggregate of the valuations returned by a supervisor; it is no part of a supervisor's duty to foot up or state the aggregate of the valuations as a prerequisite to equalization: *Case v. Dean*, 16 M. 12.

278. The adoption by the board of an erroneous aggregate valuation of personal property as a basis for the apportionment to the township does not vitiate the tax unless it has the effect to increase, beyond its just proportion, the tax to be borne by the parcels of land in question: *Ibid*.

279. The board should act on its own judgment, uninfluenced by petitions for reduction of valuations: *Attorney-General v. Sanilac Supervisors*, 42 M. 72.

280. The courts cannot revise the action of the board of equalization; its duty is political and its power exclusive; and *mandamus* to compel the board to observe the law will be denied when the board's refusal to do so is not shown: *Ibid*.

281. The action of the board in the performance of its official discretion in the equalization of taxes cannot be reviewed by the courts; so held on a bill to restrain collection of taxes because of an unfair equalization: *McDonald v. Escanaba*, 62 M. 555.

282. Where a committee's report on equalization was adopted by the board, the objection that the equalization was not performed by the whole board is of no force: *Boyce v. Sebring*, 66 M. 210.

283. When the board equalizes in June, as is required every fifth year by H. S. § 324, it is not necessary to equalize again at the October session as required by H. S. § 1027: *Silsbee v. Stockle*, 44 M. 561; *Boyce v. Sebring*, 66 M. 210.

284. An equalization by the board is as important as a separate valuation of estates between individuals; and the action of the board in making it must be duly recorded or the tax will be void. An entry under the head of "equalized valuation" of a list of townships with sums set opposite, without anything further in the record to show that this was the result of any action by the board, is not sufficient; it is not such a record as the statute requires: *Yelverton v. Steele*, 36 M. 62; *Maxwell v. Paine*, 53 M. 30.

285. The equalization is not defeated by

the fact that the report of equalization was not in writing and that there was no written resolution adopting it where the record of the board shows it was performed: *Silsbee v. Stockle*, 44 M. 561.

286. A particular record relative to equalization examined, and held sufficiently definite: *Boyce v. Sebring*, 66 M. 210.

287. Under the tax law of 1842, p. 87, § 9, there being no record of any equalization, it was presumed that the valuations by the assessors were such that there was no occasion for one: *Lacey v. Davis*, 4 M. 140, 155.

288. The certificate of equalization which H. S. § 1029 requires the chairman of the board to make and sign, upon or appended to, the roll of each township, is essential to authenticate the roll, and without it further proceedings are void: *Clark v. Azford*, 5 M. 182; *Maxwell v. Paine*, 53 M. 30; *Westbrook v. Miller*, 64 M. 129.

(j) *Re-assessment; rejection.*

289. The board of supervisors having authority to re-assess taxes for errors, a re-assessment made by them will be held good until some error therein is shown: *Tweed v. Metcalf*, 4 M. 579.

290. Where military bounty lands exempt from taxation (see *supra*, § 150) have been taxed, the auditor-general may reject the taxes on his own motion, and *mandamus* on the owner's application lies to compel him to do so: *People v. Auditor-General*, 9 M. 184.

291. The object of charging back taxes is to offset the credit given to the county for the tax on the auditor's books. When so charged back they are to be re-assessed upon the same lands if rejected for mere informality, or upon the whole township if absolutely illegal: *Ibid*.

IV. LEVY; APPORTIONMENT.

(a) *In general.*

292. It was lawful to levy taxes for 1885, under act 153 of 1885, which went into effect June 9, upon assessments made in the spring of that year under the law of 1882, which statute, as to assessment and review, was substantially re-enacted by the statute of 1885: *Davenport v. Auditor-General*, 70 M. 193 (May 11, '88); *Fletcher v. Auditor-General*, 70 M. 197.

293. Every essential step in the authorizing and assessment of taxes must appear of record. No presumptions can be raised of

essential facts not appearing in writing. A parol levy is impossible and void: *Palmer v. Rich*, 12 M. 414; *Moser v. White*, 29 M. 59; *Taymouth v. Koehler*, 35 M. 22; *Flint & P. M. R. Co. v. Auditor-General*, 41 M. 635; *Williams v. Mears*, 61 M. 86; *Michigan Land, etc. Co. v. L'Anse*, 63 M. 700; *Burroughs v. Goff*, 64 M. 464; *Michigan Land, etc. Co. v. Republic*, 65 M. 628; *Rogers v. White*, 68 M. 10 (Jan. 5, '88). For illustrations of this principle, see CITIES, §§ 59, 61; DRAINS, §§ 91, 92; HIGHWAYS, §§ 123, 124, 126, 130; SCHOOLS, § 119; TOWNSHIPS, §§ 79-85.

294. A tax cannot be levied for any purpose without express warrant of law: *Folkerts v. Power*, 42 M. 233; *Ryerson v. Laketon*, 52 M. 509.

295. It is contrary to our tax system to levy taxes to accumulate funds for the future: *Roscommon v. Midland*, 39 M. 424; *Michigan Land, etc. Co. v. L'Anse*, 63 M. 700.

(b) *Ascertainment of amount; what may include.*

As to determination by city council of amount to be raised, see CITIES AND VILLAGES, §§ 360-363.

As to what sums may be raised by tax for township purposes, see TOWNSHIPS, §§ 30-40.

296. The determination of the amount to be raised by county tax may be made at an adjourned meeting of the October session of the board of supervisors: *Hubbard v. Winsor*, 15 M. 146.

297. The requirement of H. S. § 1081 relative to the ascertainment by the board of supervisors of the amount of money to be raised by tax for county purposes is mandatory: *Boyce v. Sebring*, 66 M. 210.

298. Where, instead of fixing a specific sum to be raised by taxation, the board of supervisors directed a percentage on the assessed value, *held*, that this method was valid, as it left nothing to be done to make it known but a simple computation. It was therefore unnecessary for the court to inquire into the validity of a subsequent statute designed to legalize such method of taxation: *Hubbard v. Winsor*, 15 M. 146.

299. A county tax is not defeated for want of proper action by the board of supervisors in the amount of money to be raised, where the record of the clerk of the board shows the acceptance of a report of the finance committee and the adoption of a resolution to raise the sums reported: *Silsbee v. Stockle*, 44 M. 561.

300. Where the proper committee of the board of supervisors reported the amount nec-

essary to be raised for county expenses the coming year, and this was adopted by the board, which subsequently added certain items, *held* a sufficient ascertainment of the amount under H. S. § 1081: *Boyce v. Sebring*, 66 M. 210.

301. Where a state tax for a certain year may have included items for extra purposes to an amount sufficient to cover its supposed excess over the then existing statutory limit, it is presumed that it did so: *Crooks v. Whitford*, 47 M. 233.

302. The mere allowance of illegal demands by the board of supervisors the year preceding the levy of a tax is not sufficient to show that illegal taxes were levied, when there is no evidence to show that the amounts were included in the tax levy, or that there was not money enough on hand to pay them at the time of their allowance: *Wright v. Dunham*, 13 M. 414.

303. A tax levy for township purposes is not invalid because its amount was necessarily increased by reason of illegal expenditures or unauthorized loans of township funds the preceding year: *Peninsula Iron, etc. Co. v. Crystal Falls*, 60 M. 510.

304. A finding upon the validity of tax deeds stated that the sum of \$1,663.37 for county taxes and a sum of \$500 for township contingent fund were duly authorized to be raised, and also that \$1,000 was raised on the roll of said township, but failed to state for what; and it also stated there was "no other record of any further sum being raised for 'township expenses.'" *Held*, that this could not be construed as showing that more money was raised than was authorized: *Upton v. Kennedy*, 36 M. 215.

305. The direction by a supervisor in his warrant to the township treasurer for the collection of taxes for 1844 to collect for his own compensation four per cent. in addition to the aggregate tax assessed on each person was without authority: *Buell v. Irwin*, 24 M. 145.

That surveyor's tax included in levy is presumably lawful, see *supra*, § 75.

(c) *Conditions precedent; certification.*

306. As condition precedent to levy of tax for county agricultural society, certificate signed by both president and secretary is essential: *Hall v. Kellogg*, 16 M. 185; *Hogelskamp v. Weeks*, 37 M. 422.

As to presumption in favor of certificate's existence, see *supra*, §§ 77-80.

307. The authority to levy a township tax

is based upon the previous action of the township—either the electors or the town board, as the case may be—and the supervisor cannot levy a tax at his discretion: *Lacey v. Davis*, 4 M. 140.

308. To entitle any sum to be raised by tax for use in a township it must be properly certified by the township authorities: *Clark v. Axford*, 5 M. 182.

309. The supervisor can only assess such taxes as are properly certified to him, and such as the law makes it his personal duty to assess without such certificate: *Case v. Dean*, 16 M. 12.

310. When regular on its face, the certificate of the township clerk under a statute directing him to certify to the supervisor the amount of the township indebtedness growing out of the payment of bounties, etc., is conclusive on the supervisor, and makes it his duty to assess the tax and issue his warrant for its collection: *Smith v. Crittenden*, 16 M. 152.

311. Where a township clerk gives a certificate stating that a certain sum has been voted for township expenses at the township meeting, and a larger sum appears to have been placed upon the roll, such certificate raises a presumption that no other or further certificate was given, and consequently that the additional amount on the roll is unauthorized and illegal: *Case v. Dean*, 16 M. 12.

312. The township clerk's certificate of the amount of township indebtedness to be raised is not invalidated by its bearing date previous to some of the allowances made by the township board, it not being shown that it was not made and delivered before: *Wall v. Trumbull*, 16 M. 228.

313. The act of 1865 required the township clerk to certify to the supervisor, on or before the first Monday of October, the amount of township indebtedness growing out of the payment of bounties. A certificate was given after the first but before the second Monday of October. *Held*, that a failure to comply strictly with the law did not invalidate the certificate: *Smith v. Crittenden*, 16 M. 152.

314. The object of § 23 of the tax law of 1882 (H. S. p. 1272), requiring the township clerk to deliver to the supervisor a certified copy of the vote of the township board raising taxes to defray township expenses, is that it may be delivered by that officer to the clerk of the board of supervisors on or before the second Monday in October, to be passed upon by the supervisors; and such certificate can be executed and delivered after the first Monday in October if in time for such delivery

to the county clerk: *Peninsula Iron, etc. Co. v. Crystal Falls*, 60 M. 510.

(d) *The levy; excess.*

315. *Mandamus* lies to compel the board of supervisors to direct the levy of such township statements, duly certified to it, as are legal: *Robbins v. Barron*, 83 M. 124.

316. It is the duty of the board of supervisors—as in the case of other township taxes—to see that all sums proposed to be raised for drain taxes are authorized by law; and if it errs in such determination the person injured has a remedy by *mandamus*: *Zink v. Monroe County*, 68 M. 283 (Jan. 19, '88).

317. If a sum has been lawfully voted by the township authorities for township purposes, the failure of the board of supervisors to direct its levy (H. S. § 1081) does not invalidate the action of the supervisor in spreading it upon his roll: *Robbins v. Barron*, 83 M. 124; *Upton v. Kennedy*, 36 M. 215; *Boyce v. Sebring*, 66 M. 210.

318. Any town, school or highway taxes which the board of supervisors could legally order levied may be levied by the supervisor without such order; and the presumption (H. S. § 1165) that they were legally assessed will support the tax unless it is shown to be illegal: *Hunt v. Chapin*, 42 M. 24.

319. State and county taxes are not affected by the illegality of city taxes arising from disregard of charter provision requiring votes of aldermen to be entered on minutes: *Pontiac v. Axford*, 49 M. 69.

320. Nor does such disregard avoid a school tax which the statute requires the council to raise on the vote of the district: *Ibid*.

321. Where a township board voted a highway money tax upon the town property in addition to the labor rate, *held*, that it should have been levied upon all the property in the township, including that of an incorporated village lying therein: *Ryerson v. Laketon*, 52 M. 509.

322. A statute (S. L. 1848, p. 2) confining the limitation (two and a half mills) of taxes for state purposes to levies "for the annual support and ordinary expenses of the state government" was inapplicable to the liabilities and existing obligations of the state in respect to the public debt, and also to such other demands upon the taxing power as did not fall within the sense of the qualification: *Crooks v. Whitford*, 47 M. 288.

323. A tax deed cannot be held invalid on the ground that the state tax exceeded the

regular statutory limit fixed by the statute of 1848, if it appears that during the period within which it was levied extraordinary levies were authorized to which this limitation did not apply, and which might have justified the tax: *Ibid*.

324. An excessive levy by a city renders void a sale for delinquent taxes and a tax lease given therefor: *Edwards v. Taliafero*, 34 M. 18.

325. The levy by a city (Lapeer) of a tax exceeding the aggregate amount which the charter permits to be raised in any one year is illegal, and is not aided by the fact that it would not have been excessive had not the assessors undervalued the property on the roll: *Wattles v. Lapeer*, 40 M. 624.

326. An unauthorized levy of two per cent. on the valuation is no less illegal than one of one hundred per cent.: *Ibid*.

327. Where the common council of a city (Detroit), being authorized to assess a tax not exceeding one per cent. on the assessed valuation of property in the city for the purposes of certain funds, levied specific sums for each of those funds, which in the aggregate amounted to more than one per cent. on said valuation, the levy was held — on a bill in equity to restrain sale — void to the extent of the excess: *Connors v. Detroit*, 41 M. 128.

328. Where a township tax levy exceeded the limit of taxation by about \$3, a tax deed based thereon was held void: *Boyce v. Sebring*, 66 M. 210.

329. A tax title based in part on a school tax levied in excess — though by about six cents only — of the amount authorized by law was held invalid: *Burroughs v. Gough*, 64 M. 464.

330. A general levy for highway purposes that exceeds the legal percentage on the township valuation defeats any sale for taxes the aggregate whereof it forms part: *Silsbee v. Stockle*, 44 M. 561.

331. A special highway tax exceeding the amount allowed by law is void: *Flint & P. M. R. Co. v. Auditor-General*, 41 M. 635.

332. A tax deed is void if a portion of the taxes for which it was given and for which the lands were sold were excessive and invalid: *Hammontree v. Lott*, 40 M. 190.

333. When part of a levy appears not to have been duly authorized a sale of land for its proportionate share of such levy is invalid: *Rogers v. White*, 68 M. 10.

334. The supervisor having, without authority of law, added a certain amount to the tax-roll for township expenses, and that portion of the tax being void, and, from the nat-

ure of the case, not distinguishable from the valid part, a sale of premises for such taxes was held void: *Lacey v. Davis*, 4 M. 140.

335. Collection fees added by the supervisor without authority of law vitiated a sale for taxes of 1844: *Buel v. Irwin*, 24 M. 145.

336. Where there was no action taken by the township board in the year 1864 to determine the amount to be assessed by the supervisor for collecting expenses, the collection fee, if excessive, and if forming a part of the general levy for that year, invalidated the whole tax: *Bailey v. Haywood*, 70 M. 188 (May 11, '88).

337. A sale and title based thereon were held void where an illegal allowance voted by the board of supervisors for extra compensation to a judge was included in the assessment and levy. Certain evidence, parol and written, held competent to show that the sum voted was paid out of the levy resolved on: *Culbertson v. Witbeck Co.*, 127 U. S. 326.

338. Where an excessive portion of the taxes of a township is laid upon the land a tax title for that year is invalid: *Sinclair v. Learned*, 51 M. 335.

339. A tax for highway purposes was held void because in excess of the per cent. ordered to be raised, etc. (see HIGHWAYS, § 125): *Seymour v. Peters*, 67 M. 415.

340. Any material excess in the state, county or township tax, all of which are blended in one column and indistinguishable, renders all the taxes in that column, and any sale whereof these form a part, void; it seems that an excess of a single cent might be disregarded: *Case v. Dean*, 16 M. 12.

341. But under a statutory provision that where an illegality affects the amount of a tax only the tax shall be sustained so far as it is just and legal, the rule that a levy illegal in part only is wholly void is inapplicable, at least to suits for the recovery of taxes paid: *Lake Superior Ship Canal v. Thompson*, 56 M. 498.

(e) Apportionment among townships.

342. The requirements of H. S. § 1081 concerning the apportionment of state and county taxes among the townships are mandatory: *Boyce v. Sebring*, 66 M. 210.

343. Under said § 1081 it is sufficient if it appears of record that the just share of the amount to be raised for state and county purposes is distributed among the several townships. The calculation that led to the result need not be recorded, nor need the word "apportionment" be used or any particular form adopted: *Ibid*.

344. The board may make the apportionment by directing a percentage to be raised upon the assessed valuation instead of fixing a definite sum: *Hubbard v. Winsor*, 15 M. 146.

345. In the absence of competent evidence showing what state tax was apportioned to the township, the objection that the tax on the face of the roll appeared to be excessive was not considered; there being no basis for an estimate: *Yelverton v. Steele*, 36 M. 62.

346. Where the record of the board of supervisors does not show the amount of the state tax to be apportioned among the several townships, and contains no data from which to determine whether the amount of state taxes apportioned to a particular township is just, a deed based on such apportionment is void: *Boyce v. Sebring*, 66 M. 210.

347. The apportionment required by H. S. § 1081 may be made at an adjourned meeting at the October session of the board of supervisors: *Hubbard v. Winsor*, 15 M. 146.

348. The fact that the clerk of the board of supervisors, in certifying the amount of taxes apportioned to be assessed upon the township property, followed the old law which had been repealed, and included only the state and county taxes and not the other taxes, as required by the new law, cannot impair the validity of the state and county taxes which were certified. The objection that the other taxes were not included is merely formal so far as it bears on the taxes certified, which, under H. S. § 1165, cannot be held illegal on such a ground: *Pillsbury v. Auditor-General*, 26 M. 245.

349. Charter requirement of apportionment among city wards is directory if data are fixed by equalization of the rolls; tax stands if correct amount is assessed by each supervisor: *Fay v. Wood*, 65 M. 890.

350. If the board of supervisors refuses to apportion and raise the amount due from the county to the state, when properly certified by the auditor-general (H. S. § 1080), that duty may be enforced by *mandamus*: *Auditor-General v. Jackson Supervisors*, 24 M. 237; *Attorney-General v. St. Clair Supervisors*, 30 M. 388.

351. Where the board had adjourned before being served with a writ requiring it to spread such amount upon the tax-rolls, the supreme court declined to compel the board to come together again in order that the amount might be raised by tax during that year; the state's alternative remedy of charging the amount over to the county and causing it to be collected another year was held

preferable, as the state would not lose interest: *Attorney-General v. St. Clair Supervisors*, 30 M. 388.

V. TAX-ROLL AND WARRANT; EXTENSION.

(a) *Tax-rolls.*

352. A new roll cannot be made under the provisions of H. S. § 1039, by changing or altering the first collection roll delivered to the township treasurer or collector. That roll is required by H. S. § 1037 to be a copy of the original roll in the hands of the collector, and it must remain so. And it *seems* that no change can be made in the collection roll after its delivery to the collector, at least not unless the board of supervisors should direct it to be done to make the two rolls alike: *Ferton v. Feller*, 33 M. 199.

353. Questions based upon an unauthorized alteration of the roll by the treasurer after he had received it from the board of review cannot be considered in replevin for property seized for a tax that is *prima facie* regular and valid: *Hill v. Graham*, 72 M. — (Nov. 28, '88).

354. The assessment roll and tax-lists delivered to the county treasurer are to be copies of the corrected assessment rolls remaining in the hands of the respective supervisors: *Seymour v. Peters*, 67 M. 415.

355. The supervisor must extend upon the corrected assessment roll the taxes assessed by him; and the tax-deeds based upon taxes extended on the collection roll only are invalid: *Ibid*.

356. Not until after the assessment rolls have been equalized and corrected by the board of supervisors can the supervisors respectively extend the tax upon their respective rolls: *Tweed v. Metcalf*, 4 M. 579.

357. The certificate of the assessor (H. S. § 1025) and that of the chairman of the board of supervisors upon equalization (H. S. § 1029) form no part of the assessment roll, and therefore the tax-roll need not contain copies of such certificates: *Ibid*; *Clark v. Axford*, 5 M. 182; *Bird v. Perkins*, 33 M. 28; *Fells v. Barbour*, 58 M. 49; *Boyce v. Sebring*, 66 M. 210.

358. Nor does the insufficiency of the assessor's certificate as copied upon the tax-roll authorize a presumption that the original certificate was defective: *Bird v. Perkins*, 33 M. 28.

359. A tax is invalid if it appears only upon a roll to which it does not belong, and

is omitted from a roll to which the law authorizing it expressly assigned it: *Folkerts v. Power*, 42 M. 288.

360. The requirement that the several taxes shall be levied in their proper columns is mandatory. If a sum to be raised is not levied in the proper column it will not be presumed to be levied at all: *Case v. Dean*, 16 M. 12.

361. Where a certain tax is not found in the column where the statute requires it to be placed there is no presumption that it forms a part of the aggregate in another column, though the aggregate in such other column appears to be an equal amount too large: *Ibid.*

362. And if a tax is wrongfully mingled with a tax in another column it will vitiate any sale for taxes in that column: *Ibid.*

363. The statute (C. L. 1857, § 2350) requiring the one-mill tax for township, library and school purposes to be placed in the column of school taxes is not so far directory as to permit the amount to be blended with that of state, county and township taxes: *Ibid.*

364. Moneys voted by a township for general highway purposes are properly levied in the column of highway taxes: *Silsbee v. Stockle*, 44 M. 561.

365. Where a county tax which the statute required to be levied with the town taxes was placed in a column by itself, headed "township tax," but separate from the column containing the other township taxes, held immaterial, as no one could be injured thereby: *Wall v. Trumbull*, 16 M. 228.

366. Drain taxes must be so spread upon the assessment roll as to identify the drain for which each is levied; otherwise a warrant for collection is bad: *Dunning v. Calkins*, 51 M. 556.

367. Each tax in the roll stands on its own basis. The legal taxes are not invalidated by illegal taxes in the same roll if distinguishable and separable from them: *Clark v. Axford*, 5 M. 182.

368. No illegality in a township tax can, before the land is actually sold, affect the state and county taxes that are separately charged on the roll: *Conway v. Waverly*, 15 M. 257.

369. State and county taxes are wholly distinct in their object, destination and amount from the other taxes; they stand upon their own necessity, and have no such natural or legal connection with the others as to be necessarily involved in the same fate: *Pillsbury v. Auditor-General*, 26 M. 245.

370. Taxes that are required to be placed upon the roll in separate columns must, un-

less the contrary is shown, be presumed to have been so arranged: *Ibid.*

371. It is not a valid objection to a tax-roll that the figures indicating the valuation of the property on the roll are not preceded by a dollar-mark; and especially not where the tax is properly carried out with the dollar-mark succeeding it: *Bird v. Perkins*, 83 M. 28.

372. There was no dollar-mark opposite the figures 11,000, indicating the valuation of certain property on the roll, and those figures were written in such a way as to be divided by a red line supposed to indicate the division between dollars and cents. Held, that as the valuations on the roll were obviously made up in even dollars, no attention being paid to the ruling, and as the amounts of taxes were properly carried out and between the right lines, it could not be claimed that the valuation was \$110 and not \$11,000: *First National Bank v. St. Joseph*, 46 M. 526.

373. Signature to warrant for collection of highway list held a sufficient signing of the list itself: *Hogelskamp v. Weeks*, 87 M. 422.

374. Delay beyond the statutory time in completing the roll and appending the warrant held not material where these acts were in fact performed before the time when the roll was required to be handed over to the treasurer for collection: *Hubbard v. Winsor*, 15 M. 146.

375. Under §§ 19, 47 and 84 of the tax law of 1882, the tax-roll is *prima facie* evidence of all prior tax proceedings, and of the facts stated therein, and of the assessability of the property therein assessed: *Hood v. Judkins*, 61 M. 575.

376. The tax-roll is only *prima facie* evidence of the legality and regularity of the assessment of the taxes therein (H. S. § 1051); hence, their validity may be contested in suits to recover them: *Wattles v. Lapeer*, 40 M. 624.

(b) *The warrant; extension.*

377. The supervisor's warrant attached to the tax-roll is not void because not running "in the name of the People of the State of Michigan:" *Tweed v. Metcalf*, 4 M. 579; *Wissner v. Davenport*, 5 M. 501.

378. A warrant for the collection of taxes is not fatally defective for being addressed to the treasurer of the township of —, if it is properly signed by a supervisor of a specified township, and is annexed to its tax-roll: *First National Bank v. St. Joseph*, 46 M. 526.

379. The warrant is void if it lacks signature: *Tweed v. Metcalf*, 4 M. 579.

380. The warrant must be signed and dated: *Westbrook v. Miller*, 64 M. 129.

381. Whether, where the warrant lacked signature, such warrant had been mutilated, was held to be a question of fact which the supreme court would not pass upon: *Tweed v. Metcalf*, 4 M. 579.

382. Commissioner's signature to attached warrant for collection held a sufficient signing of highway list: *Hogelskamp v. Weeks*, 37 M. 422.

383. An extension of time granted by a township board for the collection of taxes is not invalidated by the fact that, in the absence of the township clerk, a justice of the peace summoned to act as a member of the board was appointed to act as secretary: *First National Bank v. St. Joseph*, 46 M. 526.

384. Act 8 of 1885, extending the time for collection of taxes, held not to revive warrants that had expired before its passage: *Phillips v. New Buffalo*, 68 M. 217.

385. Where the charter (here, of Bay City) gives a city council power to extend a warrant for the collection of taxes, a resolution to extend is a valid extension without formal notification to the officer holding the warrant: *Griswold v. Bay City Union School District*, 24 M. 262.

386. Where a new tax warrant is issued to an officer after the old one has been extended and while it is still in force, the new one is nugatory. If either is valid, it is enough for his protection: *Bird v. Perkins*, 33 M. 28.

VI. COLLECTION AND ITS INCIDENTS.

(a) Tax-collectors.

387. Township and city collectors are not necessarily entitled to collect new taxes levied by the state. The statute may authorize the sheriff to collect liquor taxes, and when he does so he acts in behalf of the municipalities: *Youngblood v. Sexton*, 32 M. 406.

388. If the township treasurer files bond as collector before the time for delivering the roll to the treasurer though after the day required by H. S. § 1035, it is sufficient: *Hubbard v. Winsor*, 15 M. 146.

389. And if it appears that he actually filed his bond and received the tax-roll, his acts as *de facto* collector are valid, and cannot be attacked collaterally for failure to file such bond in due season: *Stockle v. Silsbee*, 41 M. 615.

390. The sureties on a sheriff's official bond held not liable for his defaults as collector of liquor taxes, against which H. S. § 1062 provides independent security: *White v. East Saginaw*, 43 M. 567.

391. The statement of the collector under oath of the moneys received by him as collector being required for the purpose of securing an accurate accounting by him, and having no connection with the return of lands for delinquent taxes, the failure to make it will not invalidate a tax sale: *Tweed v. Metcalf*, 4 M. 579.

392. The collector's authority to collect is not derived from the roll but from the warrant; if that is fair upon its face he has the power and is protected by it; if not, it affords him no protection: *Ibid*.

393. If his warrant is fair on its face he is protected though there is an excess in the amount of a tax that the supervisor had a right to assess: *Byles v. Genung*, 52 M. 504.

394. Warrant for collection of liquor tax protects collector if fair on its face: *Wood v. Thomas*, 38 M. 686.

395. A tax assessment is in the nature of a judgment and cannot be assailed for fraud or irregularity in a suit against an officer who enforces it under process which on its face is valid: *Moss v. Cummings*, 44 M. 359.

396. A village marshal who collects a tax is protected against any illegalities but his own by a roll and warrant fair on their face; and the fact that he was a member of the village board when the tax was imposed does not charge him with notice of illegalities: *Bird v. Perkins*, 33 M. 28.

397. Nor does he become a trespasser *ab initio* by keeping a horse levied on a little longer than was necessary for giving notice and making sale: *Ibid*.

398. A warrant fair on its face protects a tax-collector to the extent of preventing liability as trespasser for wrongful taking thereunder; but he may be sued in replevin: *Le Roy v. East Saginaw R. Co.*, 18 M. 233.

399. If the warrant is void on its face the amount of the property levied on for the tax may be recovered in trespass against the collector: *Smith v. First National Bank*, 17 M. 479.

400. Or in trover: *Hagenbuch v. Howard*, 34 M. 1.

401. Where a tax-warrant is void on its face, it being issued under and referring expressly to a special statute which is unconstitutional, an officer who executes it and obtains money under it is liable in an action to recover back the money, although he has already paid it over to the treasury; no relationship of principal and agent can exist under a law that is null: *First National Bank v. Watkins*, 21 M. 483.

402. The tax-collector is not at liberty to

disregard private interests in collecting taxes; he is by implication forbidden to seize the property of others than those whom the law holds liable and whose property may be levied on, and if he acts otherwise and causes special injury he is not protected by his commission: *Raynsford v. Phelps*, 43 M. 342.

403. A tax-collector by whose false return *nulla bona* a tax became established as a lien on the land was held liable in an action on the case brought by a mortgagee of the land who had to redeem from the tax-sale: *Ibid*.

404. But if the tax was void no wrong was done and no recovery can be had: *Raynsford v. Phelps*, 49 M. 315.

As to fees of tax-collectors, see OFFICERS, §§ 315-320.

As to warrant against township treasurer for not paying over taxes collected, see OFFICERS, §§ 102-106.

(b) Interest and penalties.

405. No interest can be charged upon a tax that has never been levied and is not in default: *Lake Shore & M. S. R. Co. v. People*, 46 M. 193.

406. A penalty of ten per cent. added to taxes remaining unpaid up to a certain period is not excessive, and may be lawfully imposed by statute: *Lacey v. Davis*, 4 M. 140.

407. The imposition, under the name of interest, of heavy penalties for non-payment of taxes, criticised: *Silsbee v. Stockle*, 44 M. 561, 571.

Presumption against penalty's having been discharged, see *supra*, § 83.

408. The provision of the tax law of 1869 which made thirty per cent. the rate of interest on delinquent taxes does not apply retrospectively so as to increase the rate upon taxes assessed before the act took effect: *Smith v. Auditor-General*, 20 M. 398.

409. C. L. 1871, § 1036, requiring thirty per cent. interest on taxes not paid within a certain time after their assessment, was valid; and a tax-title including such interest was held good: *Drennan v. Herzog*, 56 M. 467.

410. The amount formerly required by C. L. 1871, § 1059, to be paid into the state treasury on redemption from tax sales, was not in the nature of interest, though called so, but was rather a penalty or an exaction for the privilege of redeeming, which the state could release, as the only party interested in enforcing it: *Flint & P. M. R. Co. v. Saginaw County Treasurer*, 32 M. 260.

(c) Liens for taxes.

411. No express provision making a tax upon land a lien thereon has ever been necessary under our system, so far as concerns the rights of the state or public; this being the direct and necessary result of the system itself: *Harrington v. Hilliard*, 27 M. 271.

412. State, county and township taxes upon real estate become a lien upon the land on the first from the first Monday in December of the year in which they are assessed, and not before. (So held in 1873; under the tax laws of 1882 and 1885 taxes become a lien upon lands on the first day of December): *Ibid*.

413. Act 228 of 1875, postponing all liens to the lien of the liquor tax, did not apply to liens created before the statute: *Finn v. Hayes*, 37 M. 63.

414. Taxes are not a lien upon personal property until levy is made thereon; so held, although the Detroit charter of 1869, ch. 5, § 22, subd. 64, provides that city taxes shall be liens upon the property assessed until paid: *Lyon v. Guthard*, 52 M. 271.

415. A lien for taxes on the interest acquired under a certificate of purchase of state swamp lands is not released by a deed to the vendor from the state: *Robertson v. State Land Office Commissioner*, 44 M. 274.

416. Taxes upon mortgaged lands are as much a lien upon the mortgage interest as upon the equity of redemption: *Horton v. Ingersoll*, 13 M. 409.

As to lien for taxes paid, see *infra*, §§ 489-491.

As to lien of defeated owner of tax-title for amount paid, see *infra*, §§ 760-766.

(d) Payment.

1. In general.

Payment or non-payment, as showing character of possession, etc., see EVIDENCE, §§ 86, 804; LIMITATION OF ACTIONS, §§ 115, 118-121; SPECIFIC PERFORMANCE, § 71.

417. Whose duty to pay; who liable. Where lands are assessed to a resident owner or occupant, it is the duty of the person assessed to pay. If unoccupied, or assessed as non-resident, the owner owes the duty. The obligation to the state is fixed by the assessment, and if that depends upon possession it must be a possession then or previously existing: *Blackwood v. Van Vleet*, 30 M. 118.

418. One in possession of land claiming it as his own is bound to pay the taxes imposed thereon and becoming due during such pos-

session: *Dubois v. Campau*, 24 M. 860; *Lacey v. Davis*, 4 M. 140; *Tweed v. Metcalf*, 4 M. 579.

419. It is the duty of any person owning lands to pay all taxes regularly assessed thereon: *Robbins v. Barron*, 32 M. 36.

420. The duty to pay taxes on land springs from ownership, and not from the relation subsisting between two or more owners: *Cooley v. Waterman*, 16 M. 366.

421. The burden is cast upon those who hold land in common to pay the taxes assessed against it: *Page v. Webster*, 8 M. 263. But the duty of each is limited to paying his share: *Ibid.*; *People v. Detroit Treasurer*, 8 M. 14; *Conn. Mut. L. Ins. Co. v. Bulte*, 45 M. 113.

422. As between each other, it is the duty of a tenant in common having the possession and use of the whole land to pay the taxes. But if not in possession he owes no duty to the others to pay their shares: *Dubois v. Campau*, 24 M. 860.

423. The estate of a deceased partner is liable for its proportionate share of the taxes upon the firm's real estate until the business is wound up; and on the administrator's accounting his payment of such share is allowed in his favor: *Loomis v. Armstrong*, 63 M. 355.

424. One who purchases lands after the first Monday in May and before the first Monday in December does not become personally liable for the tax assessed thereon that year, although his personal property is subject to seizure during the life of the warrant: *Raynsford v. Phelps*, 43 M. 342.

425. The mere taking of possession by one person with claim of title before a tax is actually levied is not inconsistent with the existence of such a state of facts as would impose on some other person (as between the two) the duty of paying the tax: *Blackwood v. Van Vleet*, 30 M. 118.

426. The provision in H. S. § 1041 making a tax a charge against the person owning the land on the first Monday of May is in favor of the public only; it creates no liability against him in favor of an owner purchasing after that date, and does not enable the latter to compel him to pay it. And as between the grantor and grantee in a warranty deed, the latter is bound to pay the taxes for the current year where the conveyance is prior to the first Monday (under the present statute, the first day) in December, and upon the former where the conveyance is subsequent: *Harrington v. Hilliard*, 27 M. 271.

427. A vendee in possession whose contract binds him to pay taxes is legally and equitably bound to pay them. The circumstances

of a particular case considered in determining vendee's liability to reimburse vendor's grantee: *Day v. Cole*, 65 M. 129.

428. One who goes into possession under an arrangement with an executory vendee obligated to pay taxes assumes the latter's obligation: *Bertram v. Cook*, 32 M. 518.

As to whether a particular contract of sale of land required vendee to pay taxes, see VENDORS, § 26.

Failure of vendee to pay, see SPECIFIC PERFORMANCE, §§ 125, 188.

429. Where land is successively mortgaged, neither mortgagee owes any duty to the other or to the mortgager to pay the taxes; as between the parties the primary duty is upon the mortgager, and if he makes default either mortgagee may pay: *Connecticut Mut. L. Ins. Co. v. Bulte*, 45 M. 113.

430. It is a mortgager's duty to pay taxes while he owns the property, and one who acquires his interest is bound to discharge the unpaid taxes standing against such property: *Fells v. Barbour*, 58 M. 49.

431. The lessee of land for mining purposes was held liable under the agreement in his lease to pay taxes on the land and improvements as well as upon the ore: *Gribben v. Atkinson*, 64 M. 651.

432. Who may pay. A mortgagee can pay the taxes to protect his interest and may have the amount added to his claim: *Payne v. Avery*, 21 M. 524; *Vaughn v. Nims*, 36 M. 297; *Conn. Mut. L. Ins. Co. v. Bulte*, 45 M. 113; *Walton v. Hollywood*, 47 M. 385.

433. But a mortgagee or other person having a lien on land has no right to intervene to pay a tax before it has been returned unpaid: *Pond v. Drake*, 50 M. 302.

434. One who had taken conveyances of government lands in his own name by way of security, agreeing in writing to sell them to one who had requested him so to take them, was allowed to recover from the vendee the amount of taxes paid by himself thereon for his own protection, even though there was doubt as to the legality of such taxes (see ASSUMPSIT, §§ 93, 94; CONTRACTS, § 149): *Congdon v. Preston*, 49 M. 204.

435. Apportioning. A tenant in common of land may pay his proportion of tax, and thus relieve his interest from the lien: *Page v. Webster*, 8 M. 263. So, under the charter of Detroit (L. 1857), an owner of a part interest, whether separately assessed or not, may pay his share to the collector before sale: *People v. Detroit Treasurer*, 8 M. 14.

436. Where lands have been assessed in

one body and at one sum, a particular share of the whole tax cannot be apportioned arbitrarily to a specific parcel and payment be received therefor and the rest returned unpaid: and a tax-title originating in such proceedings is invalid: *Wyman v. Baer*, 46 M. 418.

437. Sec. 36 of the tax-law of 1848 (L. 1848, p. 72) provided that the township treasurer, while the roll remained in his hand, should "receive the tax" or any one of the several taxes on a part of every lot or parcel of land, or an undivided share or interest which is clearly defined by the person paying the tax, or any other interest which the tax-payer will clearly define;" and § 51 (p. 77) of the same law provided that after the delinquent lands were returned "the tax shall be received on any interest in any parcel of land the same as as if paid to the township treasurer under § 36." *Held*, that the word "interest," as employed in § 51, was designed to cover not merely an undivided interest in the whole of the parcel taxed, but also any exclusive interest in any portion of such parcel, and that the county treasurer and auditor-general had the same power to receive the tax upon any portion of the parcel assessed as the township treasurer had before return: *Wright v. Dunham*, 13 M. 414.

438. As to the provisions of the tax-law of 1853 (C. L. 1857, §§ 831, 851, 878), authorizing payment of the tax on any portion of a description which the tax-payer should clearly define, or a redemption of any such portion after sale, see *Amberg v. Rogers*, 9 M. 832.

439. Payment after return. The right to make payment after the tax has been returned delinquent is the same as before, though payment is made to a different officer: *Drennan v. Beierlein*, 49 M. 272. Payment may then be made to the county treasurer or to the auditor-general: *Houghton County v. Auditor-General*, 36 M. 271.

440. What receivable in payment for taxes. Taxes are due to the public and not to the collector, and claims against him are not a legal tender for or offset against taxes; therefore a collector cannot receive in payment of taxes a draft drawn on him by a creditor and accepted by himself: *Elliott v. Miller*, 8 M. 132.

441. A township treasurer cannot receive for school taxes anything which the law has not authorized to be so received; and where he accepted local orders instead of money, he was obliged to make good the amount: *Jones v. Wright*, 34 M. 371.

That dealer's note is not receivable in pay-

ment of liquor tax, see INTOXICATING LIQUORS, § 104.

442. What constitutes payment or satisfaction. Where a town treasurer has received from a tax-payer worthless highway orders in part payment of his taxes (the rest being paid in cash), receipting the taxes and returning them as paid, and in his settlement with the township board is allowed the amount thereof, the taxes are thereby paid; and any suit which is brought for the amount of the orders must be a private controversy between the treasurer and the party who paid them to him and not a township action: *Staley v. Columbus*, 36 M. 88.

443. Payment over by a city treasurer. in advance of collection, of state and county taxes to the county treasurer, is not a satisfaction of the tax, and the party assessed is still liable: *Pontiac v. Azford*, 49 M. 69.

444. A levy upon personalty for tax assessed on land is *prima facie* a satisfaction of the tax and presumptively removes a cloud from the title to such land, so that a bill will no longer lie to remove such cloud: *Henry v. Gregory*, 29 M. 68.

445. A purchase by a second mortgagee at a tax sale operates as a payment of the tax at the option of the first mortgagee, but the latter must repay the cost if he adopts the payment: *Conn. Mut. Ins. L. Co. v. Bulle*, 45 M. 118.

446. So far as a mortgagee or his assigns is concerned, the purchase, by one who has acquired by virtue of an execution sale the mortgager's interest, of bids under sales made for taxes, operates as a payment of the taxes: *Fells v. Barbour*, 58 M. 49.

447. But a mortgager cannot be compelled against his will to treat as a payment of the taxes the purchase by an agent of the mortgagee of the land at a sale made thereof for such taxes: *Maxfield v. Willey*, 46 M. 252.

448. A purchase of a tax-title by one who orally agrees to hold it for the vendee in a land contract cannot be considered as a payment by such vendee of the taxes for the vendor's benefit: *Jones v. Wells*, 81 M. 170.

Collection of tax out of tenant's property held a sufficient payment to meet requirements of lease, see LANDLORD, ETC., § 144.

449. Evidence of payment. The collector's receipt (H. S. § 1063) for taxes is *prima facie* evidence of payment even in suits between third persons: *Johnstone v. Scott*, 11 M. 232. Payment may also be proved by parol, whether a receipt was given or not: *Hammond v. Hannin*, 21 M. 374.

450. Application of payment. Where a payment is expressly made to satisfy a particular assessment, the collector, if he receives it, must apply the money to the purpose specified and no other: *Fuller v. Grand Rapids*, 40 M. 395.

2. Recovery back of payment; duress; protest.

Recovery under common counts of tax paid by vendee for vendor, see PLEADINGS, § 117.

451. An illegal tax, involuntarily paid under protest, or under stress of existing process, may be recovered back in an action for money had and received against the collecting officer or the municipality for which the collection was made: *First National Bank v. Watkins*, 21 M. 488; *Nickodemus v. East Saginaw*, 25 M. 456; *Henry v. Gregory*, 29 M. 68; *Gebhart v. East Saginaw*, 40 M. 386; *Grand Rapids v. Blakely*, 40 M. 367; *Loudon v. East Saginaw*, 41 M. 18; *Moss v. Cummings*, 44 M. 359; *Daniels v. Watertown*, 55 M. 376; *Fletcher v. Alcona*, 71 M. -- (Oct. 19, '88).

452. The statutory provision that suits to recover taxes paid under protest must be brought within thirty days after payment does not apply where the money paid is not upon any assessment made against plaintiff or his property: *Babcock v. Beaver Creek*, 65 M. 479.

453. Where an assessment for local improvement has been illegally exacted by the marshal under color of city authority, and has been paid by him to the city, the latter cannot escape liability by reason of the special object of the tax: *Grand Rapids v. Blakely*, 40 M. 367.

454. A township is liable for all moneys collected for taxes by its treasurer which are to be retained in its treasury, including even school and highway taxes that have been paid out before suit begun to recover back such moneys; and township orders received for collection are to be treated as money: *Byles v. Golden*, 52 M. 612.

455. Nor can a township escape liability for its treasurer's illegal action because the state and county taxes have been paid over to county: *Babcock v. Beaver Creek*, 65 M. 479.

That a township cannot be sued to recover back the amount of drain taxes illegally levied and paid to its treasurer, see DRAINS, § 97.

456. An action against a city to recover back money involuntarily paid lies although the warrant upon the assessment roll had expired when the payment was made and had

been irregularly extended by the common council: *Nickodemus v. East Saginaw*, 25 M. 456.

457. In an action against the city of East Saginaw to recover back an assessment paid under protest, it was held that, in view of the conditions imposed by the charter on refunding and re-assessments, plaintiff should before suit and without unreasonable delay have laid his objections in an intelligible form before the council and made demand so as to put that body in the wrong by any refusal to refund: *Louden v. East Saginaw*, 41 M. 18.

458. Before suing the city of Lansing to recover a tax paid under protest a verified claim for refunding should be presented to the council: *Mead v. Lansing*, 56 M. 601.

459. One is precluded from seeking to recover back the amount of a tax which, as a member of the board of supervisors, he voted to impose without objecting to its levy: *Wood v. Norwood*, 52 M. 82.

460. One whose assessment has been raised without notice by the board of review, and who has paid, under protest, the tax as increased, can recover the excess in an action against the city: *Avery v. East Saginaw*, 44 M. 587.

461. Where an insolvent firm has assigned its stock for the benefit of creditors, a personal tax against the firm cannot be satisfied from the stock in the hands of the assignee upon any other terms than any other claim; and if the assignee pays the tax under protest in order to avoid seizure of the stock, he can bring suit against the officer collecting it to recover it back, so long as it remains in the officer's hands: *Lyon v. Guthard*, 52 M. 271.

462. In an action to recover a city tax compulsorily paid, payment by the city marshal to the city treasurer of the money collected by him is presumed: *Grand Rapids v. Blakely*, 40 M. 367.

463. A township's liability to refund the amount of an illegal tax collected by the township treasurer is fixed by proof that he took the money in his official capacity: *Daniels v. Watertown*, 55 M. 376.

464. When the assessment of a particular class of property is clearly identified and separable, the question of the liability of such property to the assessment can be raised in an action to recover back the amount of the tax after paying it under protest: *Herrick v. Big Rapids*, 53 M. 554.

465. In a suit to recover the amount paid under protest of a tax properly levied but excessive, the excess only will be refunded:

Lake Superior Ship Canal Co. v. Thompson, 56 M. 493.

466. Where one is assessed for the whole of a lot whereof he has previously conveyed part, he is only entitled, in a suit to recover back the tax paid under protest, to have such part refunded as is proportioned to the value of what he no longer owns: *Mead v. Lansing*, 56 M. 601.

467. A payment made on the demand of an officer under legal process is not voluntary although made before any levy; a party is not bound to await an arrest or seizure, but may assume that the officer will execute the process on which he makes demand: *Atwell v. Zeluff*, 26 M. 118.

468. A payment to a public officer in compliance with a demand, accompanied by a threat of immediate and effectual enforcement, is in no sense a voluntary payment: *First National Bank v. Watkins*, 21 M. 483.

469. Payment under pressure of a threatened levy is not voluntary: *Louden v. East Saginaw*, 41 M. 18.

470. Payment of a personal tax is not voluntary when made under protest and for the purpose of avoiding the immediate seizure of goods to satisfy it: *Lyon v. Guthard*, 52 M. 271.

471. A demand of payment by an officer having a warrant involves an implication that payment will be enforced if not made; and to render the payment involuntary an actual levy or proof that a levy could be made on tangible property is not required: *Babcock v. Beaver Creek*, 64 M. 601.

472. Where payment of a tax is made in consequence of a threat to enforce it, it must be considered voluntary if no seizure of goods or of the person has been made or threatened or authorized, and if the collecting officer has no authority to compel payment otherwise than by a sale of the land, which could injure no one: *Detroit v. Martin*, 84 M. 170.

473. A purchaser from one whose land has been irregularly assessed is not obliged to pay the tax on account of his vendor, nor is he personally liable to seizure of his goods for failure to pay; therefore if he pays before the amount becomes a lien on the land the payment must be considered voluntary: *Louden v. East Saginaw*, 41 M. 18.

474. A payment of land taxes in December, under the general tax law of 1882, is voluntary: *Peninsula Iron Co. v. Crystal Falls*, 60 M. 79.

475. Where A.'s personal property had been seized by the township treasurer and advertised for sale for a tax on lands which were

not listed to nor owned by A., who then paid the tax under oral protest, held, that the payment was involuntary, and was recoverable by A. although the amount paid for state and county taxes had been paid over to the county: *Babcock v. Beaver Creek*, 65 M. 479.

476. Payment of a tax assessed on personalty under act 153 of 1885 was made under protest prior to Jan. 1, 1886, without any demand therefor or actual or threatened levy under § 81 of said act. Held voluntary and not recoverable: *Baker v. Big Rapids*, 65 M. 76.

477. To prevent threatened sale of his land which had been assessed — under a charter provision afterwards declared unconstitutional — for a street opening, the owner made payment under protest. Held, that sale would not have clouded the title, and that the payment was voluntary and not recoverable back: *Detroit v. Martin*, 84 M. 170.

478. The general tax law (H. S. p. 1277, sec. 42), in providing for written protest upon payment of a tax, refers only to taxes on real property: *Lyon v. Guthard*, 52 M. 271.

479. No protest is necessary where the entire exaction is illegal on its face and payment is enforced by process: *First National Bank v. Watkins*, 21 M. 483.

480. No protest is necessary to authorize an action to recover money paid on the illegal demand of an officer under a legal process; but where payment is made without protest, no interest can be claimed until demand is made or suit brought: *Atwell v. Zeluff*, 26 M. 118; *Detroit v. Martin*, 84 M. 170.

481. Where an illegal tax is paid under stress of process, the payment is involuntary, and no specific protest is required: *Cox v. Welcher*, 68 M. 263.

482. While no technicality of averment is required in a protest against the payment of taxes, there should be something to point out the true cause of complaint: *Peninsula Iron Co. v. Crystal Falls*, 60 M. 79.

483. Under a statute providing that a person may, under protest, pay taxes in advance of the time they can be enforced, the protest must be specific as to reasons of illegality, or the payment cannot be recovered: *Cox v. Welcher*, 68 M. 263.

484. A protest on payment of taxes alleging that they are illegal for certain reasons stated merely determines the time from which the taxes may be recovered, and when the limitation of the right to bring the action begins to run for the causes mentioned therein. It does not make the payment involuntary when there has been no effort to collect or

demand for payment made; and there can be no recovery where the reason assigned in the protest for the illegality of the tax is not sustained by the evidence: *White v. Millbrook*, 60 M. 532.

485. A protest "on the ground that the lands are unequally and unjustly assessed, and that the township and highway taxes are illegal and unjust," is too general to be the foundation of an action to recover taxes paid: *Peninsula Iron Co. v. Crystal Falls*, 60 M. 79.

486. Where the protest was not under the statute, but was on a payment claimed to have been involuntary, and therefore, if not due, liable to be demanded back, the fact that the plaintiff set up that the tax was bad because laid upon property largely in excess of what he owned does not prevent his relying on any other ground: *Babcock v. Beaver Creek*, 64 M. 601.

487. In an action to recover back a tax payment made under protest which would have been voluntary and not recoverable except by force of the protest, the tax must be shown to be invalid for the reason specified in the protest: *Peninsula Iron Co. v. Crystal Falls*, 60 M. 510.

488. A notice of protest after service thereof has been shown is provable by copy without notice to produce the original or proof of loss thereof: *Michigan Land, etc. Co. v. Republic*, 65 M. 628.

3. Lien for taxes paid.

489. A mortgagee's lien for taxes paid to protect his mortgage is not independent of the latter, but falls when that is satisfied or foreclosed: *Vincent v. Moore*, 51 M. 618.

490. Whether H. S. § 1137, providing that any person having a lien upon lands returned for non-payment of taxes may pay the taxes thereon and have an additional lien therefor, applies to mortgagees who became such after the taxes had already been returned, *quere*: *Pond v. Drake*, 50 M. 302.

491. Said H. S. § 1137 makes no provision concerning liens created by redemption certificates; and in a particular case such a certificate obtained by a mortgagee was held to give him no equities as against a purchaser from the mortgagor: *Ibid*.

(e) Seizure for tax; warrant and return.

That replevin will not, as a rule, lie for property seized, see REPLEVIN, §§ 79-87.

492. Where lands are assessed as non-resi-

dent, the collector has no power to levy upon any property for the tax: *Tweed v. Metcalf*, 4 M. 579.

493. S. L. 1853, p. 140, § 40, authorizing levy of tax by distress and sale of goods in possession of, even though not owned by, person on whom tax was imposed, held valid, though it allowed the owner no redress but an action against him for whose tax seizure was made: *Sears v. Cottrell*, 5 M. 251.

494. The auditor-general's warrant to a sheriff to collect a railroad company's debt for specific taxes is in the nature of an execution and cannot be levied upon property that the company has conveyed away to third persons; and such levy will be enjoined. Any right based on a lien for the taxes in such case must be worked out in suit in chancery by the state against the company and its grantees: *Hackley v. Mack*, 60 M. 591.

495. Levy for a specific tax cannot be made upon the track or road-bed of a railway company; if any levy can be made upon the corporate property otherwise than goods and chattels, it must be on the franchise of earning tolls, as provided by the corporate laws: *Ibid*.

496. Goods assigned for the benefit of creditors are exempt from levy to satisfy a personal tax during the ten days allowed to the assignees for filing their bond: *Lyon v. Harris*, 52 M. 271.

497. A tax-collector is bound to take notice of a general statute which exempts corporations from any except specific taxes; and if he levies upon the property of a corporation for taxes, it may be replevied from him: *Le Roy v. East Saginaw C. R. Co.*, 18 M. 233.

498. Holding live animals levied on a little longer than may be actually necessary before selling will not make the collector a trespasser *ab initio*. The reasonable expenses of keeping the animals while lawfully held for sale are proper charges to be collected with the tax: *Bird v. Perkins*, 38 M. 28.

499. Warrant for collection of liquor tax by distress is sufficient if it contains the recitals required by act 228 of 1875, § 8: *Wood v. Thomas*, 38 M. 686.

500. Return of levy for non-payment of liquor tax need not set forth demand, which is provable by parol and is presumed in absence of evidence to the contrary: *Ibid*.

501. In replevin for property seized for taxes, where plaintiffs do not claim that the tax had been paid by them or by any one for them, the warrant of the county treasurer under § 47 of the act of 1882 is admissible as evidence without a showing that a return had

been made by the township treasurer stating that the taxes upon personal property remain unpaid, as required by § 44: *Hood v. Judkins*, 61 M. 575.

(f) *Actions for unpaid taxes.*

502. A township cannot sue for unpaid taxes except in the case provided for by H. S. § 1049, where taxes on personalty have been returned unpaid for want of property to levy on: *Staley v. Columbus*, 86 M. 88.

503. The treasurer's warrant for collection must be exhausted before suit: *McCallum v. Bethany*, 42 M. 457.

504. In the absence of express provision a city cannot sue for an unpaid tax on personalty if the city charter gives a specific remedy by process from the receiver and by levy on goods within the city: *Detroit v. Jepp*, 52 M. 458.

505. A city's right of action against a party assessed for state and county taxes is not defeated by its treasurer's having paid over the amount, in advance of collection, to the county treasurer in making his return to the latter: *Pontiac v. Axford*, 49 M. 69.

506. H. S. § 1051 makes a tax-roll *prima facie* evidence only, not conclusive evidence, of the legality and regularity of the assessments; hence their validity may be contested in suits to collect them: *Wattles v. Lapeer*, 40 M. 624.

(g) *Enjoining collection.*

1. Jurisdiction; when injunction granted.

507. The tax law of 1885, § 107, provides that "no injunction shall issue to stay the proceedings for the assessment or collection of taxes under this act." *Held*, that this provision, if valid at all, does not apply to proceedings for sale for taxes assessed before the act took effect: *Auditor-General v. Iosco Circuit Judge*, 58 M. 845.

508. Said provision is constitutional; § 42 of the act provides a sufficient remedy in permitting the tax to be paid under protest and recovered by action if illegally assessed. But asking an injunction does not preclude other relief; e. g., declaring the tax illegal: *Eddy v. Lee*, 72 M. — (Nov. 28, '88).

509. Equity has jurisdiction (but see *supra*, § 508) to restrain the collection of a tax upon land which constitutes an apparent lien on the land and might result in a sale of it by a deed that would be *prima facie* evidence of

title: *Palmer v. Rich*, 12 M. 414; *Schofield v. Lansing*, 17 M. 437; *Bristol v. Johnson*, 84 M. 123; *Thomas v. Gain*, 85 M. 155; *Marquette, H. & O. R. Co. v. Marquette*, 85 M. 504; *Folkerts v. Power*, 42 M. 293.

510. So *held*, enjoining taxes for drains illegally laid out, etc.: *Palmer v. Rich*, 12 M. 414; *Kinyon v. Duchene*, 21 M. 498; *Frost v. Leatherman*, 55 M. 83.

511. So *held* as to assessments for local improvements in cities, without reference to the question whether there was or was not personalty from which collection might be made: *Schofield v. Lansing*, 17 M. 437; *Hoyt v. East Saginaw*, 19 M. 89.

512. Jurisdiction to enjoin sale for an illegal tax depends not on the amount of the tax, but on the value of the land affected: *Fuller v. Grand Rapids*, 40 M. 395.

513. Equity will not enjoin the collection of a tax on land that has been *prima facie* satisfied by a levy upon personalty, for presumptively such a levy removes the cloud caused by the tax: *Henry v. Gregory*, 29 M. 68.

514. Equity has no jurisdiction to restrain the collection of a tax from goods and chattels: *Ibid.*; *Thomas v. Gain*, 85 M. 155. In the absence, at least, of any showing that the property possessed any peculiar value not capable of compensation in damages the remedy at law is ample: *Henry v. Gregory*, 29 M. 68.

515. So the court refused to enjoin the collection from personalty of an assessment for paving a street: *Williams v. Detroit*, 2 M. 560.

516. Equity has no jurisdiction to restrain the collection of a mere personal tax on the ground of illegality alone: *Youngblood v. Sexton*, 82 M. 406.

517. Where a tax is on persons in respect of their business, an allegation in a bill to restrain its collection that the enforcement of the tax will work irreparable injury to complainants does not confer jurisdiction, as irreparable injury is not to be predicated of the mere enforcement of a money demand: *Ibid.*

518. Where personal property sufficient in amount has been levied upon to satisfy a tax on bank stocks that was claimed to be illegal and void, an injunction against further proceedings to collect the tax or enforce the levy was refused; complainant's remedy at law by trover for the value of the goods seized or by an action to recover back the tax paid under protest being ample. And a charge in the bill that the supervisor acted fraudulently in making and in refusing to correct the assessment will not confer jurisdiction in such a case: *Hagenbuch v. Howard*, 34 M. 1.

519. Where complainant's personal prop-

erty had been assessed in the wrong township, notwithstanding his effort to secure a proper assessment, an injunction to restrain collection was refused, the remedy at law being ample: *Mears v. Howarth*, 34 M. 19.

520. Although a tax upon personal property is no ground for equitable interference, yet relief may be given against such a tax where jurisdiction has been obtained to restrain collection of the tax as charged against land: *Folkerts v. Power*, 42 M. 283.

521. Where, under the statute, a bank is not liable at all to taxation on its personalty, and a levy is made in such a way as directly to interfere with its business, the enforcement of the tax may be restrained by injunction: *Lenawee County Savings Bank v. Adrian*, 66 M. 273.

522. The sale for school taxes of lands unlawfully included within the district was enjoined: *Simpkins v. Ward*, 45 M. 559.

523. The collection of a tax upon land was enjoined where the opportunity to ascertain the amount of the assessment, and to be heard as to its fairness, had been withheld under circumstances that operated as a legal fraud: *Woodman v. Auditor-General*, 52 M. 28.

524. If a supervisor fraudulently assess the property of an individual above its value, and relatively above the other assessments on his roll, the party aggrieved may have an injunction to restrain the collection of the excessive tax: *Merrill v. Auditor-General*, 24 M. 170.

525. Where lands belonging to a non-resident were assessed at three times their value, and disproportionately with the lands of residents, a sale for taxes will be restrained: *Auditor-General v. Iosco Circuit Judge*, 58 M. 345.

526. The naked charge that the lands of non-resident complainants are assessed higher relatively than the lands of residents is not alone sufficient to afford a ground for equitable interference: *Pillsbury v. Auditor-General*, 26 M. 245.

527. The collection of a tax will not be enjoined where the sole ground of complaint is that the statute annexing the lands taxed to the municipality which levied the taxes was unconstitutional; if the law was valid the tax was good, and if void the invalidity was patent and could not cloud title: *Curtis v. East Saginaw*, 35 M. 508.

528. The collection of taxes on lands will not be enjoined on the ground of mistaken and erroneous description where the owner himself furnished the description to the assessor: *Hubbard v. Winsor*, 15 M. 146.

529. An injunction against a sale for taxes

was refused when asked merely on the ground that a proper assessment roll was not ready for review on the third Monday of May as required by law, the roll used being the roll of the year before with alterations penciled by the supervisor, but a proper roll being made out later and no excessive valuation or unauthorized levy being charged: *Albany & Boston Mining Co. v. Auditor-General*, 37 M. 391.

530. The sale of lands for delinquent taxes will not be enjoined merely for the neglect of a municipal board of review to attach their certificate to the tax-roll, and of the chairman of the board of supervisors to sign the certificate of equalization: *Burt v. Auditor-General*, 39 M. 126.

531. A bill will not lie to set aside taxes or a tax-sale on the ground that the supervisor's certificate to the assessment roll did not comply with the statute, because such an irregularity would not injure complainant, and his case would therefore be without equity: *Sinclair v. Learned*, 51 M. 335.

532. An injunction to restrain collection of assessments for repaving is unnecessary where the city has admitted the invalidity of such assessments and where a statute has been passed requiring re-assessment: *Byram v. Detroit*, 50 M. 56.

As to effect of petitioning for improvement, or of acquiescence or laches in preventing injunction against collection of assessment, see CITIES, ETC., §§ 235-240; DRAINS, §§ 72-74, 102.

2. Parties.

533. An individual has no right as a tax payer, either in his own name or on behalf of himself and the other tax-payers, to file a bill to enjoin proceedings in advance of the actual levy of a tax. He cannot seek redress until his own tax can be ascertained, and he cannot then proceed in equity except to protect his individual interests from injuries not remediable otherwise: *Miller v. Grandy*, 13 M. 540.

534. One who has conveyed land in trust to secure a debt is still the owner in fee and may seek relief against an illegal tax: *Flint & P. M. R. Co. v. Auditor-General*, 41 M. 635.

535. An old school district may maintain a bill to enjoin the assessment and collection of a tax to satisfy the amount apportioned as its share of a valuation of school property on the formation of a new district where the proceedings were taken at a meeting held without notice: *Everett School District v. Wilcox School District*, 63 M. 51.

536. Several complainants cannot join in a bill to restrain the collection of a personal

tax assessed against them separately in respect to the business in which each is individually engaged (so held of the tax on liquor dealers): *Youngblood v. Sexton*, 82 M. 406.

537. Parties owning distinct parcels of land fronting upon a street may join in a bill to restrain collection of a tax upon their several parcels for grading the street, if the illegality of the tax proceedings or other common cause is alleged as the ground of relief: *Scofield v. Lansing*, 17 M. 437.

538. Individual tax-payers of a township may join in seeking to have collection of an illegal tax on land restrained: *Bristol v. Johnson*, 84 M. 128.

539. Where the objection to an assessment is that each parcel of land separately owned was assessed an aliquot part of a general charge instead of for the particular benefits conferred upon it, it seems that the different owners cannot, their interests being hostile, join in a bill to restrain collection: *Brunner v. Bay City*, 46 M. 236.

540. Parties complaining of tax proceedings that do not affect all alike must sue severally or not at all; so, where drain charges have become individual assessments on the roll for sale, owners of lands severally affected cannot join in a bill to set them aside: *Barker v. Vernon*, 68 M. 516.

541. A husband may properly join with his wife in a bill to restrain the collection of an illegal tax upon lands belonging to her but occupied as a home by both: *Henry v. Gregory*, 29 M. 63.

542. Counties and townships are necessary parties to a bill to vacate taxes assessed, where a decree would make it necessary to charge the taxes back to the county or to spread them upon the township's land: *Adams v. Auditor-General*, 43 M. 458.

543. To a bill to enjoin or vacate a drain-tax, the township should not be made a defendant: *Emerson v. Walker*, 63 M. 483; *Barker v. Vernon*, 68 M. 516.

544. The school district is a necessary defendant to a bill to restrain the collection of a school-tax irregularly assessed; the district was allowed to be added as a formal party before entering final decree when tax was found to be absolutely illegal: *Folkerts v. Power*, 42 M. 288.

545. The city is a necessary defendant to a bill to enjoin the collection of a sewer tax; but where this objection was not seasonably made to a bill filed against the city marshal alone, it was obviated by amendment at the hearing: *Thomas v. Gain*, 35 M. 155.

546. After drain taxes are returned to the

office of the auditor-general he is a necessary party to a bill to set them aside or to restrain a sale for their collection. Leave granted on appeal to add him by amending in court below. The contractors for making the drains held not necessary parties: *Palmer v. Rich*, 12 M. 414.

547. The township treasurer and drain commissioner are proper defendants to a bill to vacate a township drain-tax, even though the tax has been returned as unpaid to the county treasurer: *Frost v. Leatherman*, 55 M. 33.

548. To a bill against a city to enjoin enforcement of a paving tax the contractor for the paving was held not a necessary defendant: *Wilkins v. Detroit*, 46 M. 120.

3. Pleading and practice.

549. A bill by a railroad company, seeking to have the collection of a tax levied upon its lands restrained on the ground that such lands were exempt from taxation under the statute sufficiently shows that the lands were such as the statute exempts if it alleges that the lands taxed are necessary for the proper operation of complainant's road and have been for a year past: *Marquette, H. & O. R. Co. v. Marquette*, 85 M. 504.

550. The bill shows a case within the jurisdiction where it alleges the tax to be "about \$150:" *Palmer v. Rich*, 12 M. 414.

551. The bill must set forth a description of the land affected: *Conway v. Waverly*, 15 M. 257.

552. A bill to restrain the collection of an assessment must expressly point out the irregularities relied upon as vitiating the proceedings: *Williams v. Detroit*, 2 M. 560.

553. A bill seeking to have the collection of an assessment for improving a street restrained because the estimate of its cost as submitted to the council was in gross cannot be aided by any presumption against the correctness of official action, and should clearly negative the submission also of detailed information: *Cuming v. Grand Rapids*, 46 M. 150.

554. As to necessary averments in bill for relief against drain-tax, see *Barker v. Vernon*, 68 M. 516. See DRAINS, § 104.

555. Relief will be refused to one who asks to have the collection of his taxes restrained on a showing that a portion of his taxes are illegal, without distinguishing the legal from the illegal: *Conway v. Waverly*, 15 M. 257; *Palmer v. Napoleon*, 16 M. 176.

556. If legal and illegal taxes are separable, an injunction will not be granted except upon payment or an offer to pay the legal part: *Palmer v. Napoleon*, 16 M. 176.

557. Where complainant denies the validity of a particular tax, without giving a reason for contesting it, he should, in his bill, offer to pay it: *Connors v. Detroit*, 41 M. 128.

558. If a bill to restrain the collection of such part only of a tax as is claimed to be illegal points out definitely the part and amount complained of, it need not offer payment of that part not sought to be enjoined: *Clement v. Everest*, 29 M. 19.

559. Where a bill to enjoin the sale of lands for taxes states in round numbers the total sum assessed against each parcel for state, county, town, highway and school taxes, without distinguishing the amounts of each, it will not be sustained if the complainant fails to show that all these several taxes were irregularly assessed, or that he had made payment or tender. The legal charge will not be enjoined to cut off what may be illegal: *Pillsbury v. Auditor-General*, 26 M. 245.

560. Where city levies for certain funds exceeded the statutory limit of taxation it was held that complainant could not claim that collection of the whole city tax should be restrained. He should offer to pay what the common council might legally assess as to those funds and the whole of the remainder; and where he fails to do this costs should be awarded against him, but his bill should be sustained to the extent of what he ought equitably to pay: *Connors v. Detroit*, 41 M. 128.

561. Where one seeks to restrain the collection of an alleged excessive tax, the injunction master should require him, as a condition to the allowance of the injunction, to pay to the proper officer so much of the tax as he concedes to be fair, and if his estimate errs in his own favor, the court has power to impose costs upon him or to deny him costs. If personal taxes are involved, the amount disputed should be required to be paid into court, or security exacted for its payment, if the court so decrees: *Merrill v. Auditor-General*, 24 M. 170.

562. A sale of land for unpaid taxes should not be perpetually enjoined without making it a condition that complainant should pay the sum lawfully demandable and which he had previously tendered; e. g., where the authorities had demanded an illegal rate of interest on the taxes, the legal rate having been tendered and refused: *Smith v. Auditor-General*, 20 M. 398.

563. Where, on a bill to restrain the collection of taxes a part only of which were alleged to be illegal, an injunction was allowed on condition that complainants paid into court the amounts assessed against them, which they did, and the bill was afterwards dismissed on

demurrer, held, that the court could not properly direct the money deposited to be paid over by the register to the township treasurer, there having been no issue or hearing that could enable the court to determine that the parties had no defense against the enforcement of collection in whole or in part: *Conway v. Waverly*, 15 M. 257.

564. The dismissal on demurrer for want of equity of a bill to enjoin the collection of taxes does not affect any legal defences which any of the complainants may set up against the levy of the taxes: *Ibid.* See *infra*, § 748.

565. Where, upon a bill to restrain a sale for taxes, the assessment or levy is found to be excessive, the decree should not cancel the whole tax but should give relief against the excess only: *Merrill v. Auditor-General*, 24 M. 170; *Connors v. Detroit*, 41 M. 128.

566. On affirming a decree restraining the sale of land for an illegal tax, costs cannot be awarded against the state, but may be allowed to complainant to be collected on the appeal bond: *Flint & P. M. R. Co. v. Auditor-General*, 41 M. 635.

(h) Return of delinquent taxes.

567. A township treasurer's return of delinquent state and county taxes before the statutory time avoids a tax-deed based on a sale of property therein reported: *Bailey v. Haywood*, 70 M. 188.

568. An extension of time for making return of taxes is for the benefit of the tax collector, and if he makes return before the expiration of the extension no legal wrong is done to tax-payers, their right to make payment being the same as before: *Drennan v. Beierlein*, 49 M. 272.

569. A return by the treasurer or collector that the tax has not been paid is necessary to justify a sale of the land upon which the tax was levied: *Rowland v. Doty*, H. 3.

570. A tax-deed is void if based on a sale for taxes for a year in which the property was not returned: *Newkirk v. Fisher*, 72 M. — (Oct. 26, '88).

571. All subsequent proceedings for the sale of the land for the unpaid taxes are founded upon this return: *Tweed v. Metcalf*, 4 M. 579.

As to necessity of return of delinquent labor tax, see HIGHWAYS, § 135.

572. It is the treasurer's duty to make an effort to collect taxes assessed to residents before he can lawfully return them unpaid: *Rayner v. Lee*, 20 M. 384.

573. A township treasurer's return of de-

linquent taxes is good if in the statutory form: and it will be presumed, if necessary to sustain it, that personal demand was made for taxes assessed upon residents: *Dickison v. Reynolds*, 48 M. 158.

574. Under R. S. 1838, p. 87, § 9, the oath on returning taxes unpaid could, in the absence of the county treasurer, be administered by his deputy: *Malony v. Mahar*, 2 D. 432, 1 M. 26.

575. A return by the township collector of the failure to pay taxes which is neither signed by him nor verified by his oath is unofficial and of no legal value: *Upton v. Kennedy*, 36 M. 216; *Seymour v. Peters*, 67 M. 415.

576. A failure of the overseer of highways to verify his return of unpaid highway labor—even as to resident lands—held to defeat a deed for taxes of that year: *Hogelskamp v. Weeks*, 37 M. 422.

577. The description, in the township treasurer's return, of the land as in "town seven of range seven" instead of town seven north of range seven west, is sufficient where the names of the township and county are given, and there is only one town seven of range seven in that township: *Wright v. Dunham*, 13 M. 414.

578. Sending the township treasurer's original return to the auditor-general instead of the transcript required by H. S. § 1069 will not invalidate a subsequent sale: *Stockle v. Silsbee*, 41 M. 615.

579. The county clerk is not required to certify to the township treasurer's return to the county treasurer, but to the proceedings had on extending the time for collecting taxes, and to the accuracy of the county treasurer's transcript to the auditor-general: *Hunt v. Chapin*, 42 M. 24.

580. H. S. § 1069, requiring transcripts of the collectors' returns to be forwarded to the auditor-general by the first day of March, if mandatory in cases where there is no extension, does not apply to cases of extension; and if by reason of extension the returns are not made in time, the county treasurer should forward transcripts as soon as practicable thereafter: *Houghton Supervisors v. Rees*, 34 M. 481.

581. But the auditor-general cannot be compelled to receive returns and credit the counties with delinquent taxes when such returns are made after the first day of March; but he may do so, in his discretion, if the returns reach him in time to advertise and sell the lands the same year: *Houghton County v. Auditor-General*, 36 M. 271, 41 M. 28.

VII. APPROPRIATION; ACCOUNTING.

As to expenditure of local taxes raised in unorganized county, see COUNTIES, §§ 118, 119.

As to adjusting, between old and new counties, equities as to taxes previously levied, see COUNTIES, § 120.

582. H. S. § 1225 is a standing appropriation of one-half the specific taxes arising from mining companies to the counties respectively: *People v. Auditor-General*, 9 M. 141.

583. A county clerk drew an order on the state treasurer, payable to the order of the county treasurer, for specific tax moneys due the county. This order was indorsed over by the county treasurer to an attorney appointed by the board of supervisors to receive the money, and the attorney presented it to the auditor-general and applied for his warrant on the state treasurer for the amount. Held, that the order was sufficient: *Ibid*.

584. The right of a township, city or village to a liquor tax collected therein becomes vested at the date at which the law requires the tax to be paid, and is not divested by subsequent detachment of territory before actual payment: *Springwells v. Wayne County Treasurer*, 58 M. 240.

585. Where a township has collected and used liquor taxes which an incorporated village within its limits had a right to assess and receive, the village may sanction the collection and claim the money: *Decatur v. Decatur Township Board*, 33 M. 385.

586. A city from which the county treasurer has withheld liquor-tax moneys cannot on that account refuse to pay over moneys collected for county taxes: *Marquette v. Ishpeming City Treasurer*, 49 M. 244.

As to township's liability to county for its treasurer's default, see TOWNSHIPS, §§ 65, 66.

587. A county treasurer cannot refuse, on the ground that the county claims moneys to be due it from the state, to pay over taxes which he has collected for the state; and in a *mandamus* proceeding against him by the auditor-general he cannot, though under instructions from the board of supervisors, make a counter-claim or set-off of the county's demands; this would, in effect, be a suit against the state: *Aplin v. Van Tassel*, 72 M. — (Nov. 28, '88).

588. Under the tax laws the auditor-general cannot open accounts with the township or with the particular funds of a township, but only with the county; and so long as the county is indebted to the state he may with-

hold from the former amounts collected within it upon taxes assessed for township, school and highway purposes: *Ottawa Supervisors v. Auditor-General*, 69 M. 1 (March 2, '88).

589. It is only in cases where taxes have been illegally assessed and rejected, or otherwise set aside according to law, that they can be charged back to the counties; mere delay in collections, caused by the pendency of injunctions, is not sufficient: *Auditor-General v. Monroe Supervisors*, 86 M. 70.

590. Section 124 of the tax-law of 1869 (C. L. 1871, § 1090, repealed Aug. 8, 1875) provided that lands remaining unsold for five years after they were bid off to the state should then be sold for what they would bring, crediting the county for any excess over the amount charged by the state against any parcel, and debiting the county for any deficiency. *Held*, that the title of the statute precluded any retrospective effect—even if such effect could lawfully be given—and that § 124 did not apply in cases where lands were bid off to the state prior to its passage: *Auditor-General v. Monroe Supervisors*, 86 M. 70; *Auditor-General v. Saginaw Supervisors*, 62 M. 579.

591. The state cannot be charged with the amount of tax-bids upon a sale not authorized by law—*e. g.*, a sale made after an unauthorized postponement: *Houghton County v. Auditor-General*, 41 M. 23.

592. Where the manner of dealing adopted by state and county shows that there has been no settlement, but at most an account stated, a mistake of fact will be corrected if great injustice has been done: *Auditor-General v. Saginaw Supervisors*, 62 M. 579.

593. In accounting with the state a county should receive credit for all the lands bid off by the state, and whatever interest and other charges have been made at the auditor-general's office on account of the same: *Ibid*.

594. The interest on amounts bid by the state for tax lands should cease against the county when the land is redeemed at either office. If, for convenience or necessity in keeping the account, interest is charged on state bids when the land is returned for the whole period in which redemption is allowed, and payment of the tax is made before that period expires, the amount of interest collected from that time should be credited back to the county: *Ibid*.

595. It seems that the auditor-general can cancel and charge back to the county illegal state tax purchases: *Ibid*.

596. Under H. S. § 1140, a county is re-

sponsible to the state for the county treasurer's default in accounting for moneys received by him in conducting tax-sales; he does not act in such sales as the mere agent of the state, and separately from his official duties as county treasurer; nor is it optional with him whether he will conduct such sales or not: *Attorney-General v. St. Clair Supervisors*, 80 M. 388.

597. By taking from the county treasurer the bond required by H. S. § 1098 to account for moneys received at tax-sales, the state does not confine itself to the remedy thereon in case of his default: *Ibid*.

598. The board of supervisors may be compelled by *mandamus* to levy the amount of the loss and reimburse the state. The state loses nothing by laches in delaying to press payment: *Ibid*.

Board of supervisors compelled to apportion amount due state from county, see *supra*, §§ 350, 351.

VIII. SALES.

(a) *Power to sell, in general.*

As to presumptions in favor of validity, see *supra*, §§ 85-93.

That a levy exceeding statutory limit, or tax including a sum illegally added, defeats sale and tax-deed, see *supra*, §§ 324-339.

599. Statutes with reference to tax-sales should not be construed more strictly or more loosely than is the rule with statutes generally; the intent governs: *Clark v. Mowyer*, 5 M. 462.

600. Sales cannot be made under § 70 of the general tax-law of 1882 (H. S. p. 1285) for taxes assessed under the former tax-law, because the title of the tax-law of 1882 confines it to future proceedings, and because act 11 of 1882 (subsequently passed), which repeals former laws relating to taxation, leaves them in force for the sale of lands for taxes levied under them: *Thomas v. Collins*, 58 M. 64; *Ball v. Busch*, 64 M. 836; *Busch v. Nester*, 70 M. 525 (June 8, '88); *Nitz v. Bolton*, 71 M. — July 11, '88).

601. The tax-law of 1885 (act 153) was confined by its title to a prospective operation, and sales for delinquent taxes of previous years could not be made thereunder: *Humphrey v. Auditor-General*, 70 M. 292; *Hall v. Perry*, 72 M. — (Nov. 1, '88); *McNaughton v. Martin*, 72 M. — (Nov. 1, '88).

602. Act 17 of 1887, providing for the collection under the tax-law of 1885 of unpaid taxes assessed prior to the passage of the act

of 1885, authorizes a sale of land for unpaid taxes assessed in 1884 under the tax-law of 1882, and therefore requires a reversal of a decree in proceedings pending when the act of 1887 took effect enjoining the collection of such taxes under the law of 1885: *Humphrey v. Auditor-General*, 70 M. 292.

603. But the provision of § 2 of said act 17 of 1887, which attempts to validate sales theretofore had under the provisions of said act of 1885 for delinquent taxes of years previous to 1885, is unconstitutional: *Hall v. Perry*, *McNaughton v. Martin*, cited *supra*, § 601.

604. A statutory amendment allowing sale to pay marshal's fees is not, unless plainly so intended, applicable to assessments previously made: *Fuller v. Grand Rapids*, 40 M. 395.

605. Land might be sold by the county for delinquent school-taxes under the law of 1848: *Tweed v. Metcalf*, 4 M. 579.

606. The auditor-general cannot postpone the sale of lands to another year, either directly or by accepting delinquent returns from the counties at too late a date for a sale the same year. A sale so postponed is void: *Houghton County v. Auditor-General*, 41 M. 28.

607. A sale for taxes for a year in which it is shown the land was twice assessed and the tax once paid is invalid: *Rayner v. Lee*, 20 M. 384.

608. A sale of land for taxes is wholly unwarranted if the tax has been paid, and the deed given thereon will convey no title to the purchaser: *Rowland v. Doty*, H. 3; *Johnstone v. Scott*, 11 M. 232; *Rayner v. Lee*, 20 M. 384.

(b) Decree; notice.

609. An invalid decree of sale for taxes should be annulled by reversal instead of being permitted to stand as a null decree. And both parties should be placed in the condition in which they would have been if no proceedings in court had been taken: *State v. Eddy*, 58 M. 318.

610. Under R. S. 1846 it was not necessary that the auditor-general should specify in his notice of tax-sales the particular place at the county seat where the sales would take place. A notice which stated that the sale would take place at such public and convenient place as the county treasurer should select at the county seat was sufficient (overruling *Miles v. Walker*, 4 M. 641): *Clark v. Mowyer*, 5 M. 462; *Wisner v. Davenport*, 5 M. 501.

611. And a notice by the county treasurer of the place where the tax-sales would be made, posted at the court-house, county treas-

urer's office and other public places at the county seat a week before the day of sale, was a reasonable and sufficient notice by him if any was required: *Ibid*.

(c) The sale; description.

612. There is no limitation by statute of the amount of land that may be sold from any parcel for the taxes assessed thereon: *Sibley v. Smith*, 2 M. 486. And where the whole is sold no presumption of fraud can arise from that fact: *Tweed v. Metcalf*, 4 M. 579.

613. The description by which sale is made may differ from that of the assessment where there are statutory provisions for payment on part of an entire description: *Amberg v. Rogers*, 9 M. 332. So, it may differ from the description returned where payment on part can be made after return: *Wright v. Dunham*, 13 M. 414.

614. Whether a tax-sale of a town lot, as such, is valid where the town plat has never been recorded, *quere*: *Johnstone v. Scott*, 11 M. 232.

615. The land sold may be described by initial letters, abbreviations and figures: *Sibley v. Smith*, 2 M. 486.

As to descriptions in tax-deeds, see *infra*, §§ 642-647.

That sales-book of county treasurer is evidence, see EVIDENCE, § 494.

(d) Fraud of officers and bidders.

616. If a county treasurer, having charge of sales of land for taxes, become a purchaser himself, the sale is a nullity; and he cannot be allowed, under the statute, for improvements made by him on the lands purchased: *Clute v. Barron*, 2 M. 192.

617. Fraudulent combinations of bidders at tax-sales to prevent lands being sold to others will not vitiate a purchase by one not a party to the combination: *Case v. Dean*, 16 M. 12.

(e) Effect of sale; certificate; assignment.

618. Every tax-sale is a sale of the complete title; and, if legal, when it matures takes precedence of all other titles: *Sinclair v. Learned*, 51 M. 335; *Westbrook v. Miller*, 64 M. 129.

619. A sale, unless cancelled by some proper authority, extinguishes the tax: *Auditor-General v. Monroe Supervisors*, 86 M. 70; *Auditor-General v. Saginaw Supervisors*, 62 M. 579.

620. The state purchases and holds under tax-sales in the same manner as individuals: *Ibid.*

621. And it cannot, by selling an old tax-bid, avoid the bar of the statute of limitations arising meantime from adverse possession: *Chamberlain v. Ahrens*, 55 M. 111.

622. A state tax-bid transferred to a private purchaser is in his hands the same in all respects as if the land had been bid off by him originally: *Auditor-General v. Monroe Supervisors*, 36 M. 70.

623. One who had bought lands at a tax-sale, but had not yet become entitled to a deed when it was sold for another year's tax, was not the owner within the meaning of R. S. 1838, so as to be entitled to a surplus received on the last sale, even though such surplus was deposited in the state treasury and remained there until he had obtained his deed: *People v. Hammond*, 1 D. 276.

624. A tax certificate gives no right of entry on land prior to execution of tax-deed: *Busch v. Nester*, 62 M. 381.

625. A certificate of tax purchase clouds title if the deed to be issued thereon will be *prima facie* evidence of title; and, therefore, the assignment of such certificate is a valuable consideration for a promise to pay money: *Stoddard v. Prescott*, 58 M. 542.

626. A quitclaim to a third person from a tax purchaser who has as yet no deed can operate at most merely as an assignment of the certificate of sale: *Nitz v. Bolton*, 71 M. — (July 11, '88).

Assignment of tax certificate provided for in decreeing foreclosure, see MORTGAGES, § 647.

(f) *Redemption.*

627. A legislative intent to cut off all right of redemption as to sales made prior to a new statute on the subject will not be inferred, being contrary to the uniform course of state policy in that regard, and also affecting injuriously the rights of those who before were entitled to redeem: *Flint & P. M. R. Co. v. Saginaw County Treasurer*, 83 M. 260.

628. Act 17 of 1875 (H. S. § 1094) takes the place of and repeals C. L. 1871, § 1059, and being the only act in force providing for redemption it applies to sales previously made; the twenty-five per cent. interest or penalty required by the earlier act to be paid to the state is released: *Ibid.*

629. Under the charter of Detroit of 1857 the owner of an undivided interest in land assessed as a whole was allowed to redeem his share from a city tax-sale by paying a pro-

portionate amount: *People v. Detroit City Treasurer*, 8 M. 14.

630. Where the county treasurer's sale-book of lands delinquent for taxes of 1844 showed an erasure opposite the land in question, it was held that no legal presumption of redemption by payment was raised, and that the question was one of fact to be decided in the trial court: *Tweed v. Metcalf*, 4 M. 579.

631. In a particular case where the owner of land sold for taxes let the time for redemption, which he would otherwise have made, elapse, relying on the purchaser's assurance that he would assign the tax certificate to him on payment of his bid with interest, the purchaser having taken a deed was compelled to reconvey to the owner: *Laing v. McKee*, 18 M. 124.

IX. THE DEED; TAX-TITLES.

Conveyance of tax-title by quitclaim deed, see CONVEYANCES, § 266.

(a) *Validity; execution.*

That tax-deeds based on excessive levies or on taxes wholly or partly unauthorized, are void, see *supra*, §§ 324-339.

632. The auditor-general cannot convey lands sold for taxes unless express authority is conferred on him by statute: *Sibley v. Smith*, 2 M. 486.

633. Sections 76, 64 and 65 of the tax-law of 1843 held to authorize the auditor-general to execute deeds to purchasers at sales for delinquent taxes of 1841: *Ibid.*

634. The auditor-general will not be compelled by *mandamus* to give a deed where, under the statute (S. L. 1843, p. 8, § 69), the giving or withholding thereof depends upon his judicial discretion; the remedy of a dissatisfied party is by *certiorari*: *People v. Auditor-General*, 8 M. 427.

635. Under H. S. § 283, and under the presumption in favor of official action, held, that the deputy auditor-general has power to execute and acknowledge tax-deeds: *Westbrook v. Miller*, 56 M. 148; *Drennan v. Herzog*, 56 M. 467; *Fells v. Barbour*, 58 M. 49.

636. The tax-deed need not recite the proceedings prior to the sale. The recitals need not show more than the capacity in which the officer acts: *Sibley v. Smith*, 2 M. 486.

637. A second tax-deed, issued by the auditor-general on the loss or destruction of the first, is void unless it recites such loss or destruction, and the date, if possible, of the first deed: *Burroughs v. Goff*, 64 M. 464.

638. A deed given for state tax-lands may be based on the separate sales of different years, and will be good if any one of the sales was valid: *Hunt v. Chapin*, 42 M. 24.

639. A deed from the auditor-general based upon a tax-sale made by the county treasurer to himself is a nullity, and the grantee cannot recover for improvements: *Clute v. Barron*, 2 M. 192.

640. A tax-deed executed after redemption from the sale, or, what is in legal effect the same thing, after the lien of the tax has been transferred to the owner of the property and merged in his general title before the sale has become absolute, confers no title: *Gould v. Day*, 94 U. S., 405.

641. Recording is not essential to the validity of a tax-deed: *Fells v. Barbour*, 58 M. 49.

That circuit court commissioners cannot be empowered to try tax-titles, see COURTS, § 47.

(b) *Description of the land.*

642. The interest or title intended to be conveyed must appear from the deed: *Groesbeck v. Seeley*, 13 M. 329.

643. As between himself and the owners of adjacent lands the tax-purchaser must take notice at his peril of the description in his own deed to know what lands it describes, if any, and whether it sufficiently describes any land: *King v. Potter*, 18 M. 134.

644. Where a tax-sale is made for an undivided interest the burden is on the purchaser to show what it covers; he must identify his interest: *Butler v. Porter*, 18 M. 292.

645. This description in a tax-deed was sustained: "The following described land, situated in the county of Wayne, to wit, that part of private claim 61 lying east of the north branch of the river Ecorse, in township 3 S. of R. 11 E., containing 20 $\frac{7}{11}$ acres, be the same more or less;" and as the deed gave definite and permanent boundaries it conveyed all the land within those boundaries, although there were in fact about eighty acres: *Gilman v. Riopelle*, 18 M. 145.

646. Under a statute containing provisions whereby part of a parcel assessed as an entirety may be cleared by payment or redemption, a description may be good for the purpose of sale and conveyance although insufficient for the purpose of an assessment; it cannot, therefore, be presumed that the description for assessment was the same as that in the tax-deed; and it will be presumed, in aid of such a deed, that a tax instead of being assessed on the description by which sale was made was assessed on the whole parcel, and

that payment or redemption took place as to part: *Amberg v. Rogers*, 9 M. 382; *Wright v. Dunham*, 13 M. 414.

647. A description in a tax-deed which designates the land not by governmental survey subdivision or by number of lot or tract, but by subdivisions that are not legal or that cannot physically exist, is insufficient: *King v. Potter*, 18 M. 134.

As to description for assessment, see *infra*, §§ 206-215.

(c) *Operation and effect.*

648. The title acquired by tax-sale has nothing to do with the previous chain of title; it breaks up and destroys all prior titles: *Lacey v. Davis*, 4 M. 140.

649. A tax-title, if legal, takes precedence of and extinguishes all prior titles: *Van Aiken v. Monroe*, 88 M. 725; *Sinclair v. Learned*, 51 M. 385; *La Coss v. Wadsworth*, 56 M. 421; *Westbrook v. Miller*, 64 M. 129.

650. A valid tax-title cuts off all liens and encumbrances resting on the land, including homestead and dower rights: *Robbins v. Barron*, 32 M. 86.

651. Yet ownership of a tax-title does not necessarily prevent one from seeking relief on the basis of antecedent equities: *La Coss v. Wadsworth*, 56 M. 421.

652. A tax-deed gives no right but such as comes from the tax proceeding itself; it does not estop the state from claiming a previous escheat; the state gives no warranty: *Crane v. Reeder*, 25 M. 303.

653. The state does not guarantee tax-titles except as statutes may provide; and in all other cases the purchaser must be content with such interests as he gets under his purchase: *Rice v. Auditor-General*, 30 M. 12.

654. As an illegal tax-title is a nullity it cannot of itself divest or affect the true title in any way, and the true owner cannot be compelled to incur expense or take active measures to get rid of it: *Groesbeck v. Seeley*, 13 M. 329.

655. A tax-deed cannot relate back to the time of the sale for the purpose of making parties trespassers by reason of acts done on the land before the deed was given: *Hess v. Griggs*, 48 M. 397.

656. A tax-title relates back from the time it becomes absolute to the time of the tax purchase for all purposes of substantial justice, but not otherwise; and it cannot be used to divest rights acquired since the period to which it would relate: *Connecticut Mutual Life Ins. Co. v. Bulte*, 45 M. 113.

657. A defendant in ejectment who after issue joined acquired tax-titles from a third party, but did not set them up in defence, was not estopped by the judgment against him from afterwards asserting them; in such a case they do not relate back: *Hemmingway v. Drew*, 47 M. 534.

658. Tax-deeds that are not valid cannot relate back to protect the acts of one who has entered under mere tax certificates before the deeds have issued; such entry cannot be treated as color of title: *Busch v. Nester*, 62 M. 381.

659. One who cuts timber under a void tax-title is liable as a trespasser: *Safford v. Busto*, 4 M. 406.

660. A tax-deed, though shown by evidence to be void, affords color of title to one who has gone into possession thereunder: *Hoffman v. Harrington*, 28 M. 92.

661. A tax-deed offered to show good faith of a defendant charged in trover for cutting timber was excluded where good faith was immaterial: *Grant v. Smith*, 26 M. 201.

662. Whether, in view of the notorious fact that tax-deeds are generally found to be invalid, a person who cuts timber relying solely on a tax-deed, beyond which he has made no examination to ascertain whether it is really valid, can, where it turns out to be void, claim that he acted in good faith, *quere*: *Winchester v. Craig*, 33 M. 205, 222.

663. Hearsay evidence that tax-title relied on to show good faith was investigated and pronounced valid by counsel excluded: *Tuttle v. White*, 49 M. 407.

664. Where a party claiming to have been in possession of land when he cut logs thereon brings replevin for them against one claiming title to the land, and where plaintiff attempts to prove title and consequent right of possession by tax-deeds that are void on their face, no conflicting titles remain for the jury to try, and defendant is entitled to judgment: *Busch v. Nester*, 70 M. 525.

665. Tax-titles, though held by third persons, are admissible in defence to an action of trespass brought by a plaintiff who shows no actual possession: *Tolles v. Duncombe*, 34 M. 101.

666. A tax-title held by a third party may be shown as divesting plaintiff's title in ejectment by a defendant who is under no estoppel: *Lee v. Clary*, 38 M. 223.

667. A mortgage is not merged in a tax-title acquired by the mortgagee to protect his interest: *Baker v. Clark*, 52 M. 22.

668. A tax-title that inures to a mortgagee's

benefit is no consideration for abating the mortgage debt: *Baird v. Randall*, 58 M. 175.

669. A tax-title obtained by one who has no right to use it adversely to the regular title simply inures to the protection of the latter: *Horton v. Ingersoll*, 13 M. 409.

670. A purchase-money mortgage given back by grantees who bought with warranty and took possession could not be resisted, on foreclosure, on the ground of an outstanding tax-title fifteen years old whereunder no claim had been made against such mortgaggers: *Smith v. Fiting*, 37 M. 148.

671. Whether record of a tax-title is constructive notice that the holder claims the land, *quere*: *La Coss v. Wadsworth*, 56 M. 421.

672. Recording tax-deed to unoccupied land asserts title and warrants ejectment: *Hoyt v. Southard*, 58 M. 432.

When holder of tax-title can be made defendant in foreclosure, see MORTGAGES, § 553.

As to the statute protecting improvements made under tax-titles, see EJECTMENT, §§ 231-235.

(d) *As evidence; presumptions.*

673. A statute making tax-deeds *prima facie* evidence of the proceedings to the date of the deed is valid; so held of § 124 of the tax-law of 1858: *Groesbeck v. Seeley*, 13 M. 329.

674. The provision of the tax-law of 1858 (L. 1853, p. 151, § 89) under which a tax-deed five years recorded was to be "positive evidence" of a title in fee-simple in the grantee cannot avail a party to whom sale was made after the amendment in 1855 (C. L. 1857, § 871) striking out such provision: *Blackwood v. Van Vleit*, 80 M. 118.

675. The provision in § 124 of the tax-law of 1858 making a tax-deed two years recorded conclusive is void: *Quinlon v. Rogers*, 12 M. 168; *Case v. Dean*, 16 M. 12.

676. Section 135 of the tax-law of 1858 held invalid so far as it makes absolute and indefeasible after five years the title to lands bid off by the state for taxes: *Groesbeck v. Seeley*, 13 M. 329. See *Case v. Dean*, 16 M. 12.

677. The objection that the grantee in a tax-deed offered in evidence was in possession when the tax accrued only goes to the validity of the deed as a conveyance of the title, and not to its admissibility in evidence; for the statute makes the deed *prima facie* evidence of the correctness of all previous proceedings: *Gilman v. Riopelle*, 18 M. 145.

678. An objection to the introduction of a

tax-deed in evidence is untenable if it assumes as established facts that would be mere matter of defence to the deed: *Crane v. Reeder*, 25 M. 303.

679. The admission in evidence of a city tax-deed for an unpaid paving-tax, without first proving regularity of proceedings prior to sale, involves simply the order of proof and is not error: *Dubois v. Campau*, 24 M. 360.

680. Where defendant in ejectment relies upon tax-deeds, one of which is found to be valid, the exclusion of evidence showing the others to be invalid is immaterial: *Drennan v. Herzog*, 56 M. 467.

681. Where evidence tending to invalidate a tax-deed is admitted, and goes to the jury without any ruling upon it, the supreme court cannot consider the alleged defects: *Sands v. Davis*, 40 M. 14.

682. A tax-deed is presumptively valid; its invalidity is not to be inferred from ambiguous facts or from any failure to find facts: *Stockle v. Silsbee*, 41 M. 615.

683. The policy of our tax-laws favors the stability and repose of tax-titles, and discourages their being brought into question by collateral proceedings: *Blanchard v. Powers*, 42 M. 619.

684. A tax-title cannot be collaterally attacked by contesting in an ejectment suit the lawful acts of a *de facto* tax collector: *Stockle v. Silsbee*, 41 M. 615.

685. The validity of a tax-title, especially if it be of long standing, cannot be impeached in an action of ejectment against the holder by evidence showing the falsity of the supervisor's certificate of valuation attached to the assessment roll: *Blanchard v. Powers*, 42 M. 619; *Gamble v. East Saginaw*, 48 M. 367.

686. Under the codes of 1827 and 1833 the county treasurer's deed of lands sold for taxes was evidence only that the sale made by him was regular. The party claiming under the deed must show the regularity of the prior proceedings: *Rowland v. Doty*, H. 3; *Scott v. Detroit Young Men's Society*, 1 D. 119; *Lattimer v. Lovett*, 2 D. 204; *Ives v. Kimball*, 1 M. 308.

687. A tax-deed acquired in 1840, under statutes that did not make such deeds *prima facie* evidence of regularity, fails to show title unless evidence is given of the correctness of the proceedings: *Farmers', etc. Bank v. Bronson*, 14 M. 361.

688. Under the statute of 1843, and subsequent tax-laws, a tax-deed from the state is *prima facie* evidence of the regularity of the proceedings to date of deed and of title in the grantee, and throws the burden of proof upon

the party contesting it: *Sibley v. Smith*, 2 M. 486; *Amberg v. Rogers*, 9 M. 332; *Groesbeck v. Seeley*, 13 M. 329; *Wright v. Dunham*, 13 M. 414; *Tolles v. Duncombe*, 34 M. 101; *Van Auken v. Monroe*, 38 M. 725; *Crooks v. Whitford*, 47 M. 283; *Busch v. Nester*, 62 M. 381.

689. Where lands are sold for taxes which include taxes assessed under the drainage law of 1859, the deeds given by the auditor-general are *prima facie* evidence of regular proceedings in the assessment and subsequent steps to a sale: *Palmer v. Rich*, 12 M. 414.

690. The saving clause of C. L. 1871, § 1133, repealing prior tax-laws, which provides that the repeal "shall not affect any act done, sale made or right acquired," etc., is construed in the light of the state policy of the subject to save the prior enactment making a state tax-deed *prima facie* evidence of title in the grantee: *Blackwood v. Van Vliet*, 30 M. 118.

691. Where a tax-title has been assailed for defects in the proceedings, the party claiming under it is entitled to rest upon the *prima facie* showing made by the production of his deed until evidence assailing it has been given, and then he may go into affirmative evidence of its regularity: *Taff v. Hosmer*, 14 M. 309, 313.

692. To obviate the effect of the statute making the deed *prima facie* evidence of the regularity of all proceedings, the party objecting should produce such evidence as will exclude reasonable presumption of regularity. It should be such evidence of irregularity, not pertaining to mere directory requirements, as to demand explanation. Some specific defect, the insufficiency of some particular act, or the non-performance of some requisite duty, should be shown: *Lacey v. Davis*, 4 M. 140.

693. Where under the statute the tax-sales were to commence on the first Monday of October and to continue from day to day, etc., and the tax-deed recited a sale made on the *eleventh* of October, it was held incumbent on the party disputing the validity of the deed to show a non-compliance with this statute: *Ibid.*

694. Until a reasonable presumption to the contrary has been raised by proof, it is to be presumed that everything has been done which the statute authorizes to be done to render the sale valid: *Amberg v. Rogers*, 9 M. 332.

695. As against the presumption of correctness in favor of a tax-deed it is not sufficient to prove facts from which an inference of irregularity might be drawn, if such facts are consistent with the existence of others which would make the proceedings regular: *Wright v. Dunham*, 13 M. 414.

696. As the burden of showing invalidity rests upon the party assailing a tax-deed, it is incumbent upon one who relies to defeat such deed on the illegality of a tax levied for township purposes to introduce the township records to show that the amount levied by the supervisors was excessive: *Boyce v. Sebring*, 66 M. 210.

697. When such evidence is given as, in the absence of all counter-testimony, will afford reasonable ground for presuming the proceedings anterior to the deed to be irregular, the burden of proof is thrown upon the holder of the tax-title; but the irregularity must be a substantial error, affecting injuriously the interests of the owner of the land: *Case v. Dean*, 16 M. 12.

698. Where, to show that a tax was erroneously assessed upon a part instead of the whole of a parcel of land, the collector's return was put in evidence, which showed a tax against a part of the land only, but it was consistent with this return that a tax might have been correctly levied upon the whole, and a part of the land then cleared of the tax by payment before the return, it was held that the court, in support of the deed, must presume such payment: *Wright v. Dunham*, 13 M. 414.

699. A tax-deed invalid on its face is properly excluded from evidence. H. S. §§ 1092, 1165, making tax-deeds *prima facie* valid, cannot apply to papers that bear on their face evidence showing them to be void: *Ball v. Busch*, 64 M. 836.

700. So held of tax-deeds issued on a sale, under act 9 of 1882, of lands for the tax of 1881, showing on their face such infirmity: *Ibid.*; *Busch v. Nester*, 70 M. 525 (June 8, '88); *Nitz v. Bolton*, 71 M. — (July 11, '88).

(e) *Who can rely upon.*

701. Prior to the enactment of H. S. § 1184, it was held that it was not competent for one to acquire a cumulative title to lands by allowing them to be sold for delinquent taxes: *Tweed v. Metcalf*, 4 M. 579.

702. Nor could a person in possession of land, claiming title thereto, acquire any additional right or title to the land by purchase at sale for taxes levied thereon either before or after he took possession. So held where a deed for taxes of 1842 was offered to strengthen title claimed under a deed for taxes of 1839: *Lacey v. Davis*, 4 M. 140.

703. But, criticising *Lacey v. Davis*, *supra*, it was held, with reference to a deed for tax of 1854, that there can be no estoppel against

purchasing tax-titles except against one whose duty it was to pay the tax or remove the burden: *Blackwood v. Van Vleit*, 30 M. 118. Followed in *Sands v. Davis*, 40 M. 14. See *Jeffery v. Hursh*, 45 M. 59.

704. Even prior to H. S. § 1184, a person making a second purchase before the time for redemption from his first purchase had expired could claim under both: *Tweed v. Metcalf*, 4 M. 579.

705. Whether one in possession of land and neglecting to pay the taxes on it can rely on a title derived from a sale of such taxes for the purpose of defeating a conveyance which he had previously made but has not perfected by delivery of possession, *quere*: *Jeffery v. Hursh*, 45 M. 59.

706. If one cannot rely upon a tax-title purchased by himself, he cannot make use of one purchased by another: *Ibid.*

707. One who takes possession of lands under tax-titles previously acquired, who cuts timber thereon, claiming to own such lands, and who tells the supervisor to assess the lands to him, cannot purchase and hold tax-titles for that year: *Day v. Cole*, 65 M. 129, 154.

708. The owner of a distinct parcel of lands assessed as a whole cannot suffer sale to be made for the tax and then acquire a title as against the owner of the rest: *Cooley v. Waterman*, 16 M. 366.

709. A tenant in common cannot acquire a tax-title so as to cut off his co-tenants' interests: *Page v. Webster*, 8 M. 263. Whether he is in possession or not: *Butler v. Porter*, 18 M. 292; *Dubois v. Campau*, 24 M. 360; *Conn. Mut. L. Ins. Co. v. Bulte*, 45 M. 113.

710. So, if such co-tenant procure another person to bid in the property for him, and take the deed, this will give him no greater right: *Dubois v. Campau*, 24 M. 360.

711. As to what would be the rule where a stranger should bid in the land on his own account and get a deed, which a co-tenant not in possession should afterwards purchase, *quere*: *Ibid.*

712. An heir of a deceased tenant in common who derives title solely from decedent stands in his ancestor's shoes with reference to a tax-title suffered to arise during his ancestor's life and transferred to himself after such ancestor's death: *Ibid.* And see the *dictum* to like effect in *Lacey v. Davis*, 4 M. 140.

713. A tax-title that arose from the default of a tenant in common may nevertheless be set up against the other tenants by one who takes a quitclaim from such tenant, and who

enters as a stranger to their claims and claiming the whole title: *Sands v. Davis*, 40 M. 14.

714. Where one has sold land with warranty, taking back a mortgage thereon for the purchase price, his devisees cannot, by purchasing at a sale for a tax that their devisor was bound to pay, being a lien on the land when he conveyed, use the tax-title to defeat the title of their devisor's grantee and mortgager; nor would such tax-title cut off the mortgager's equity of redemption so as to dispense with foreclosure: *Taylor v. Snyder*, W. 490.

715. A tax-title against which a mortgagee is indemnified cannot be set up against his foreclosure title by the party who indemnified him: *Wyman v. Baer*, 46 M. 418.

716. A second mortgagee who allows the land to be sold for taxes and obtains a tax-deed cannot use such deed adversely to the first mortgage: *Horton v. Ingersoll*, 13 M. 409.

717. But where a second mortgagee had obtained a tax-title on the premises, it was held that he could use it as a defence in ejectment brought by the first mortgagee after foreclosure unless the latter should repay the cost of the tax purchase: *Conn. Mut. L. Ins. Co. v. Bulte*, 45 M. 118.

718. Where the holder of a tax-title having a second mortgage goes into possession under the mortgagee, the tax-title is no answer to a claim by the first mortgagee (whose mortgage was prior to 1843) that he should account for the rents and profits to be applied on their mortgage: *Farmers', etc. Bank v. Bronson*, 14 M. 361.

719. Tax-deeds obtained by an execution purchaser on sales for taxes that the defendant in the execution who had mortgaged the land before the execution should have paid do not cut off the mortgagee's rights: *Fells v. Barbour*, 58 M. 49.

720. Tax-titles acquired by a tenant do not cut off his landlord's title: *Bertram v. Cook*, 32 M. 518; *Conn. Mut. L. Ins. Co. v. Bulte*, 45 M. 118; *Williams v. Towl*, 65 M. 204.

721. A person who erects a building on the leased premises which is thereafter included in the assessed valuation, and taxes levied accordingly, cannot acquire tax-titles issued on the sale of the property for the non-payment of such taxes: *Williams v. Towl*, 65 M. 204.

722. One who, by arrangement with a person in possession of land under contract of purchase, obtains possession of the premises, cannot permit the land to be sold for taxes on the ground that it was the vendee's — not his own — duty to pay; nor can he either directly or indirectly become the purchaser, and if he

does so he holds for the vendor's benefit the title thus acquired: *Bertram v. Cook*, 32 M. 518.

723. One who buys at a tax-sale under an oral agreement to hold the title in trust for another who should have paid the taxes may nevertheless rely on the tax-title as cutting off all claims: *Jones v. Wells*, 31 M. 170.

Tax-title taken in attorney's name, resulting trust: See ATTORNEYS, § 52.

As to recognition of agency in making tax purchase, see AGENCY, § 102.

(f) Who may attack.

724. H. S. § 1166, restricting the right to contest the validity of tax-deeds, was prospective only, and did not apply to sales made before the act of 1869 took effect: *Clark v. Hall*, 19 M. 356; *Seymour v. Peters*, 67 M. 415 (Oct. 27, '87).

725. Under H. S. § 1166, limiting to one having "title" the right to question the title acquired by the auditor-general's deed, a mere claim for taxes paid is not enough: *Robbins v. Barron*, 34 M. 517.

726. H. S. § 1166 does not prohibit a party having a title *prima facie* sufficient under common-law rules from contesting the validity of a tax-deed. Such a title is presumed to have been "acquired from the United States or from this state," although the owner may not be able to trace it back to the state or general government by a connected line of conveyances: *Gamble v. Horr*, 40 M. 561.

727. A *prima facie* case at the common law — where it was only necessary to show actual possession under a claim of title — is all that is required to enable defendants in ejectment to make defence against a tax-title: *Maxwell v. Paine*, 53 M. 30.

(g) Limitation of actions with reference to tax-titles.

728. The act of Feb. 17, 1842 (L. 1842, p. 138), fixing the period wherein ejectment by or against claimants under tax-deeds should be brought, applied only to conveyances on sales for taxes thereafter assessed: *Porter v. Van Dyke*, 31 M. 176.

729. The benefit of the ten-year limitation in § 2 of said act of 1842 did not apply in favor of a party who was in possession under some other claim at the time of obtaining the tax-title; he must have entered into the actual possession under the tax-deed: *Gilman v. Riopelle*, 18 M. 145.

730. Said § 2 of said act of 1842 was continued in force as to all rights accrued before

the taking effect of R. S. 1846, by § 9, ch. 189, R. S. So ejectment brought in 1853 for land whereupon defendant entered in August, 1842, under color of a tax-title, was barred: *Perry v. Hepburne*, 4 M. 165.

731. In order to create a bar under the provisions of H. S. § 8698, subd. 2, there must have been an adverse holding by the claimant under the tax-deed for the period named — ten years: *Yelverton v. Hilliard*, 38 M. 355; *Yelverton v. Steele*, 40 M. 538; *Sparrow v. Hovey*, 44 M. 63; *Perkins v. Nugent*, 45 M. 156.

732. It seems unnecessary to use the word "hostile" in defining to the jury adverse possession under a tax-deed; possession by claim of title under such a deed being, perhaps, necessarily hostile to the title of the original owner: *Sparrow v. Hovey*, 44 M. 63.

733. All that H. S. § 8698, subd. 2, requires is that a claim consistent with the face of the tax-deed be asserted for ten years with possession; so held where all the land was claimed under two tax-deeds, each for an undivided half, but not defining which: *Chamberlain v. Ahrens*, 55 M. 111.

734. It is sufficient that the claim was under a tax-title only a part of which vested in the party holding adverse possession: *Cook v. Clinton*, 64 M. 309.

735. The statute protects parties claiming under tax-titles, whether good or bad, after ten years' occupancy: *Chamberlain v. Ahrens*, 55 M. 111; *Reilly v. Blaser*, 61 M. 399; *Cook v. Clinton*, 64 M. 309.

736. And it makes no difference that the tax-deed arose from a tax which the grantee therein was bound to pay: *Reilly v. Blaser*, 61 M. 399.

737. The state in 1882 conveyed a state tax-purchase of land for taxes of 1858, which land had meantime been adversely occupied under tax-titles for more than ten years. Held, that ejectment was barred: *Chamberlain v. Ahrens*, 55 M. 111.

(h) Quieting title under.

738. H. S. § 1168, providing that any person holding a deed of lands executed by the auditor-general for non-payment of taxes might commence a suit in chancery to quiet his title thereto, without taking possession of such lands, was repealed by act 11 of 1882; and the saving of rights in the latter act does not aid one whose deed was executed after the repeal: *Goodman v. Nester*, 64 M. 662.

739. Under act 281 of 1865 (p. 576, § 4), containing provisions similar to said H. S. § 1168, it was held that a claimant not in possession

could file a bill only when the lands were vacant: *Tabor v. Cook*, 15 M. 322.

740. Without any reference to the validity of his tax-deed, an occupant's title under a tax-sale was quieted after an adverse possession for more than twenty years: *Hardy v. Powell*, 40 M. 413.

As to when party claiming under tax-deed should bring ejectment instead of seeking to have his title quieted, see EJECTMENT, § 72.

(i) Relief against tax-title.

741. The owner of land may maintain a bill to clear his title from a cloud set up by a city as purchaser at a sale under special assessment for a lateral sewer laid through certain land adjoining his, which seems to have been intended to make a part of an ultimate alley, but which is not legally an alley: *Chaffee v. Detroit*, 53 M. 573.

742. Owners in severalty of distinct parcels of land sold for a tax cannot join in a bill to set aside the tax-sale as illegal where they have no common grievance: *Brunner v. Bay City*, 46 M. 236.

743. Relief against void tax-titles acquired by a tenant in common may be had on a bill for partition filed by his co-tenant: *Page v. Webster*, 8 M. 263. See EQUITY, § 769.

744. A bill to annul the title of the state obtained at a tax-sale cannot be upheld against the auditor-general: *Burrill v. Auditor-General*, 46 M. 256; *Auditor-General v. Saginaw Supervisors*, 62 M. 579.

745. The grantee of one who has conveyed lands with warranty need not be made a party to a bill filed by the grantor to set aside a fraudulent tax-purchase that might affect his covenants: *Taylor v. Snyder*, W. 490.

746. One who files a bill in equity to vacate a tax-sale because the tax is excessive must offer to pay what is equitable: *Sinclair v. Learned*, 51 M. 385.

747. No formal tender is necessary before filing a bill to set aside an invalid tax-title as a cloud on complainant's title; but an allegation of an offer to pay \$25 for a release, where it greatly exceeds the sum for which the lands were sold, is an averment of an offer to do all that equity requires: *Hanscom v. Hinman*, 30 M. 419.

As to averments in bill to quiet title against parties claiming under tax-titles, see EQUITY, § 832.

As to averments in bill to clear title clouded by tax-sales, see EQUITY, § 830.

748. Absolute dismissal of a bill to clear a

title clouded by tax-sales does not prevent any defence at law against the tax-titles: *Gamble v. East Saginaw*, 43 M. 367. See *supra*, § 564.

(j) *Reimbursement of defeated purchaser; lien as for taxes paid.*

749. The auditor-general cannot refund any money upon the failure of a tax title except as some statute requires it: *Rice v. Auditor-General*, 30 M. 12.

750. Under act 136 of 1863 (S. L. p. 196), a tax-title purchaser's right to reimbursement only arises where (1) the land had not been subject to taxation at all, (2) the taxes had been actually paid in due time, or (3) a certificate had been given in due time by the proper officer that no taxes were charged on the land; it does not apply where the land was subject to taxation and taxes had been actually, even though irregularly, assessed, and no attempt had been made to ascertain and pay them: *Ibid.*

751. Act 82 of 1858 (§ 103), providing for the refunding of the purchase money and interest in case a tax-title has been "annulled pursuant to law," and a copy of the judgment annulling it presented to the auditor-general, does not authorize such repayment where the tax-title has merely been introduced in evidence in an ejectment suit and held defective; the judgment to which it refers is one which by the statute acts in direct analogy to a bill to quiet title. The system inaugurated by this statute having been held unconstitutional (see *COURTS*, § 47), the section becomes inoperative: *Ibid.*

752. If a tenant in common whose interests are taxed inseparably from those of his co-tenants purchases the land on their neglect to pay the taxes he takes as trustee for them, but they must refund their proportion of what he has paid: *Connecticut Mut. L. Ins. Co. v. Bulle*, 45 M. 113.

753. A subsequent tax-title which, under H. S. § 1208, would preclude the holder of a prior one from possession unless he had first paid or tendered to the owner of the later title the amount of the tax for which the subsequent deed was given, was not necessarily a legal tax-title, though the tax whereon it was based must have been one that had some warrant in law; therefore, a tax-title that was invalid because an excessive portion of the taxes of a township was laid upon the land might be relied on as entitling the holder to repayment under said § 1208: *Sinclair v. Learned*, 51 M. 335.

754. Said H. S. § 1208 does not make it

necessary for a plaintiff in ejectment claiming under a tax-title to show as a part of his case that he has paid all taxes assessed against the land subsequently to such deed, or has paid or tendered to defendant any taxes he has paid subsequently thereto; his failure to do so is matter of defence to be interposed by defendant, and plaintiff may contest the question whether defendant has paid such taxes: *Beard v. Sharrick*, 67 M. 321.

755. The proper practice as to the verdict, payment or tender, and entry of judgment in such cases, indicated: *Ibid.*

756. Under act 281 of 1865 (p. 575, § 1, similar to H. S. § 1167), it was held that the holder of a tax-deed set aside for irregularity could recover—on failing in ejectment—so much only of the taxes paid by him as were legally chargeable on land: *Hart v. Henderson*, 17 M. 218.

757. And under said act of 1865 it was also held that on failure of a tax-deed the judgment for that and other taxes paid by the holder could be rendered only against the owner of the land, whose duty it was to pay the taxes, or those claiming under him, and not against the owner of a valid tax-title acquired after such deeds and payments: *Robbins v. Barron*, 32 M. 36.

758. Such subsequent valid tax-title extinguishes the claim of the holder of the prior invalid deed against the person holding the land when it was acquired for the amount of the tax for which it was given: *Id.*, 32 M. 36, 33 M. 124.

759. And where two persons hold invalid tax-deeds on the same land, the prior holder not being permitted under H. S. § 1165 to question the validity of the subsequent deed, his claim for reimbursement for taxes paid will be subordinate to the claim of the holder of the subsequent deed: *Robbins v. Barron*, 34 M. 517.

760. A plaintiff in ejectment cannot, when the tax-titles whereon his action is based are held invalid, recover judgment in the same action for the amount of the taxes paid by him and for which H. S. § 1167 gives him a lien; he must take steps in equity to enforce such lien: *Weimer v. Porter*, 42 M. 569; *Ellsworth v. Freeman*, 43 M. 488.

761. But the remedy in chancery cannot be invoked until the rendition of a judgment against the party claiming under the tax-titles for the recovery of the land: *Ibid.*; *Nester v. Busch*, 64 M. 657.

762. And this is so even though it conclusively appears by other means that the tax-deed is not good; the lien is purely statutory,

and must be enforced as directed by the statute: *Nester v. Busch*, 64 M. 657.

763. Whether the remedy under H. S. § 1167 by way of a lien for taxes paid was not destroyed by the repeal of the tax-law of 1869 by act 11 of 1882, *quere: Ibid.*

764. The title of act 153 of 1885 being entirely prospective, the provisions of § 118 thereof, enforcing a lien upon lands in behalf of the grantees in tax-deeds issued in pursuance of the tax law of 1882, is void as in violation of Const., art. 4, § 20: *Ibid.*

765. Tax-receipts are not evidence to prove a lien for taxes paid on land held under a tax-title; the fact to be proved calls for the assessment rolls: *Weimer v. Porter*, 42 M. 569.

766. A finding upon the validity of the taxes on which a title is based should distinguish such taxes as are so assessed by authority of law as to be a lien on the land from those levies which are illegal, so that the court may determine such questions of lien as may be raised under H. S. § 1167: *Stockle v. Silsbee*, 41 M. 615.

X. TAX-LEASES.

767. The term of a tax-lease in Detroit begins when the time for redemption expires: *Murphy v. Campau*, 38 M. 71.

768. A tax-lease is invalidated by a showing that an unlawful excess, a portion of which entered into the amount of taxes for which the property was sold, was spread upon the roll: *Edwards v. Taliaferro*, 34 M. 13.

769. Tax-leases afford color of title to one who goes into possession thereunder, though they are in fact invalid: *Hoffman v. Harrington*, 28 M. 90.

770. One whose title is derived from an execution sale of mortgaged land cannot cut off the mortgagee's title by acquiring tax-leases for taxes which the mortgagor should have paid: *Fells v. Barbour*, 53 M. 49.

TELEGRAPH COMPANIES.

1. In the absence of statutory provision telegraph companies are not common carriers, nor are obligations and liabilities measured by the rules that govern such carriers: *Western Union Tel. Co. v. Carew*, 15 M. 525.

2. Nor are they insurers against all errors in the transmission and delivery of messages except in so far as by their rules and regulations, or by contract or otherwise, they assume that position; H. S. ch. 101 imposes no such liability: *Ibid.*

3. Where a person writes a message under a printed notice which requests the company to send such message according to the conditions of the notice, such notice must be regarded as a general proposition by the company to all persons to send messages on the terms and conditions specified therein; and by writing the message and delivering it to the company the party must be held to accept the proposition, which thereby becomes a contract: *Ibid.*

4. A condition in such case that the company shall not be responsible for errors in transmitting messages over connecting lines is valid, and relieves the company from liability: *Ibid.*

5. As to telegrams in evidence, see *Gregory v. Wendell*, 40 M. 432.

Telegram, when an insufficient memorandum: See STATUTE OF FRAUDS, §§ 4, 7.

TENANTS FOR LIFE.

As to CURTESY and DOWER, see those titles.

Creation of life estate by will, see WILLS, §§ 240-246, 249, 252, 274.

Widow's life estate under statute of descents, see ESTATES OF DECEDENTS, § 475, WILLS, § 274.

Life estate by entirety, see HUSBAND AND WIFE, § 24.

1. The devisee of a life estate is entitled to possession, rents, issues and profits: *Pitcher v. Douglas*, 37 M. 339.

2. The right of the owner of a life interest to control and possess the property during his life is not affected by a levy upon and sale of the remainder-man's interest: *Storrs v. Storrs*, 59 M. 55.

3. A widow had a life estate in the west half of a building. The reversioner also owned the east half of the building. Held, that the reversioner would not be enjoined from removing a stairway that had been used in common by the two halves, and closing the communication, the stairway not being a way of necessity or a permanent appurtenance, and the proposed change tending to increase the value of the estate as a whole, and the benefit to the reversioner being greater than the injury to the life tenant; such a tenant must make the property available to his profit at his own expense: *Scott v. Palms*, 48 M. 505.

4. The life tenant is bound to keep the premises in repair, and is not permitted to commit waste; and any improvement such tenant makes of a permanent character in-

ures to the benefit of the remainder-man: *Curtis v. Fowler*, 66 M. 696.

As to life tenant's liability for waste, see WASTE.

5. As between the owners of the fee and of a life estate in the same encumbered property, the life estate is to keep down the interest and the fee is to be charged with the principal. Interest due at the death of the ancestor, as between the tenants for life and in fee, will be treated as principal: *Campbell v. Campbell*, 21 M. 438.

6. The owner of a life estate in personal property has the power to make it available according to circumstances. If it consists of securities the estate is not an estate in each particular security, but in the aggregate; and an assignment of a security cannot be complained of unless it would tend to diminish the estate at the life tenant's death: *Sutphen v. Ellis*, 35 M. 446.

7. If, in such case, the estate is wasted by the life tenant, the party in whose behalf the limitation order is made has a remedy, but the personal representatives cannot interfere: *Ibid*.

8. In a particular case it was held that, even on the supposition that a widow's right was limited by will to a life estate, she was entitled to possession of securities and could foreclose them, especially as the co-executor acquiesced: *Proctor v. Robinson*, 35 M. 284.

9. Payments on deceased vendor's contract to sell land held good where made to his widow, to whom he left life estate in all his property, and where there was no administration: *Lamore v. Frisbie*, 42 M. 186.

10. As the deed of a tenant for life conveys the present freehold, rescission on the ground of a complete failure of consideration cannot be claimed by tenant's purchaser with warranty, who maintains that he bought the land believing that tenant's title was in fee: *Leal v. Terbush*, 52 M. 100.

11. Where a life estate becomes vested in or is transferred to the owner of the fee without any intervening estate it is merged in the fee: *Ryder v. Flanders*, 80 M. 836.

TENANTS IN COMMON.

I. OF REAL PROPERTY.

(a) *In general.*

(b) *Use and occupation; rents; accounting.*

(c) *Ouster and adverse possession.*

(d) *Conveyances and contracts.*

(e) *Mortgages.*

II. OF PERSONAL PROPERTY.

(a) *In general.*

(b) *Ouster and conversion; remedies.*

That partners do not hold as tenants in common, see PARTNERSHIP, § 132.

As to partition and its incidents, see PARTITION.

I. OF REAL PROPERTY.

(a) *In general.*

Homestead may be claimed, see HOMESTEAD, § 26.

As to payment of taxes by a tenant in common and as to right to acquire tax-titles, see TAXES, §§ 421, 422, 709-718.

That a tenant in common not ousted cannot bring ejectment against his co-tenant, see EJECTMENT, § 22.

1. Husband and wife, to whom lands are conveyed by the same deed, are not tenants in common, or strictly joint tenants: *Fisher v. Provin*, 25 M. 347; *Ætna Ins. Co. v. Resh*, 40 M. 241; *Manwaring v. Powell*, 40 M. 371; *Roediger v. Drain Commissioner*, 40 M. 745; *Jacobs v. Miller*, 50 M. 119; *Vinton v. Beamer*, 55 M. 559.

2. Where lands are conveyed to persons named in fixed proportions, this shows them to be tenants in common so far as the documentary title goes, although such persons are copartners: *Godfrey v. White*, 48 M. 171, 177.

3. Where lands are conveyed or devised to two or more persons, and the instrument is silent as to the interest which each is to take, the presumption is that their interests are equal: *Campau v. Campau*, 44 M. 31; *Jacobs v. Miller*, 50 M. 119.

And see *infra*, §§ 49, 50.

4. But where the interests of each are not thus made apparent there can be no presumption that they are equal: *Campau v. Campau*, 44 M. 31.

5. A tenant in common cannot, as such, have any peculiar interest in any specific portion of the entire tract held in common: *Tharp v. Allen*, 46 M. 389.

6. Nor can one tenant in common, without the assent of his co-tenants, select a part of the tract held in common and hold it as his share: *Campau v. Godfrey*, 18 M. 27.

7. A woman repaired certain buildings that were the joint property of decedent and of her husband, but no express authority was shown from decedent to the husband to repair or to authorize the wife to repair. Held, that she could not recover from the estate for the repairs: *Stackable v. Stackable*, 65 M. 515.

8. Tenants in common of the whole estate can join in summary proceedings to recover possession: *Moody v. Seaman*, 46 M. 74.

9. Land whereon there was a hotel was sold by contract to C. and W., the latter of whom, while both were holding as tenants in common, transferred to defendant his interest under the contract and also a half interest in the hotel furniture, defendant agreeing to perform the original contract. W. assigned to C. his interest in the contract of assignment made with defendant, and also his interest in the original contract, and C. assigned to a party who tried to recover possession from defendant, though the latter was not in default upon the original contract, but had merely failed to pay for the furniture assigned by W. to him. *Held*, that defendant was rightfully in possession under the original contract by virtue of W.'s assignment and that he had never forfeited his right: *Woods v. Burke*, 67 M. 674.

10. Whatever a tenant in common takes by partition he takes practically as a purchaser from the aggregate tenancies: *Tharp v. Allen*, 46 M. 389.

11. A tenant in common whose interest becomes severed by partition is a purchaser for value of the interests of his co-tenants in the lands set apart to him: *Campau v. Barnard*, 25 M. 381.

(b) *Use and occupation; rents; accounting.*

12. One tenant in common of lands cannot, in the absence of any express promise, recover of his co-tenant for the use and occupation by the latter of the lands claimed in common; the right of each to occupy is one of the legal incidents of such tenancy, and it pervades the whole land; and one is not excluded by the failure of the other to occupy, but whatever he occupies in such case is in his own right and not under his co-tenant: *Everts v. Beach*, 31 M. 136; *Wilmarth v. Palmer*, 34 M. 347.

See, also, ASSUMPSIT, § 39.

13. Nor would an adverse holding by one tenant enable his co-tenants to recover for the use of the land; for such a holding is always fatal to recovery of rent: *Wilmarth v. Palmer*, 34 M. 347.

14. One in possession as tenant in common, in privity and full recognition of the title to the undivided interest not owned by himself, is bound to account to the owner of it; a promise by such tenant to pay rent to another

on the assumption that the promisee has the outstanding interest cannot be enforced without proof that he has it. In an action on such a promise the burden is on the promisee of showing that the defendant's possession is in privity with himself or his predecessors in the title: *Fuller v. Sweet*, 30 M. 237.

15. As tenants in common are equally entitled to possession, one cannot be called on to account for the use of the land where no previous demand has been made by the other: *Davis v. Filer*, 40 M. 310.

16. As against the lessee, one of two joint lessors can collect and receipt for the entire rent, and apply it to the payment of the lessors' joint mortgage on the leased property; but he cannot, without authority, apply rent so collected to the payment of his co-lessor's indebtedness to the lessee, a company in which both are stockholders; and if he does so he must account for the rent as received: *Miner v. Lorman*, 70 M. 173.

17. A. and B., being tenants in common and joint lessors, A. conveyed part of his interest to C. *Held* that, until agreement between all the parties as to what share of the rent should be paid to C., A. and B. could collect the whole, and B. having received the rent must account to A. for half, it not appearing that C. had laid claim to his part: *Ibid*.

18. If a tenant in common in charge of property objects, in partition proceedings, to the appointment of a receiver, he cannot, pending further proceedings, charge for his services: *Pierce v. Pierce*, 55 M. 629.

(c) *Ouster and adverse possession.*

19. One tenant in common can oust another: *Campau v. Dubois*, 39 M. 274; *Sands v. Davis*, 40 M. 14.

20. A purchaser from one who holds merely an undivided interest in patented lands is not estopped from setting up an adverse claim which originated before his purchase against the remaining co-tenants of the other undivided interests: *Sands v. Davis*, 40 M. 14.

21. A tenant in common already rightfully in possession was *held* not estopped to deny the title of a wrongful claimant to the remaining interest, from whom he had as a supposed co-tenant taken a lease which had been regularly terminated by proper notice: *Fuller v. Sweet*, 30 M. 237.

22. A tenant in common who has entered upon half of the premises is not precluded from claiming the whole; such a tenant may

buy the rest of the title: *Chamberlain v. Ahrens*, 55 M. 111.

23. The actual possession of a tenant in common will not be presumed adverse to that of his co-tenants: *Campau v. Campau*, 44 M. 31.

24. And his constructive possession in like manner is limited to his interest as tenant in common: *Ibid.*

25. Sole possession by one tenant in common is not presumed to be adverse to his co-tenant's rights; and those rights will not be affected unless such sole possession is under a claim of exclusive right, which claim must be clear and distinct and must be brought home to the knowledge of the co-tenants either by express notice or by implication; and if the latter, all doubt growing out of the nature and character thereof should be against an ouster: *Ibid.*: 45 M. 367.

26. Where one in occupation of land claiming under tax-titles takes a conveyance of an undivided portion of the original title, thus becoming a tenant in common with the other owners of such title, any presumption against an adverse holding by him thereafter may be overcome by evidence that the possession he then had continued under claim of exclusive right with the intention to exclude the other owners of such title from any right or interest: *Cook v. Clinton*, 64 M. 309.

27. On the facts as appearing in particular cases the hostile possession of a tenant in common was held to have continued so long as to bar a recovery against him by his co-tenants: *Dubois v. Campau*, 28 M. 304; *Campau v. Dubois*, 39 M. 274.

28. Where the grantee of one tenant in common receives a warranty deed of the entire land, and enters into possession in good faith, actually believing that he owns the land, such possession if continued for the statutory period will operate as an ouster of his grantor's co-tenants: *Hightstone v. Burdette*, 61 M. 54.

29. In ejectment between grantees of tenants in common, where defendant claimed title by adverse possession and that his entry under a warranty deed was an ouster of the co-tenants, it was held that the fact was for the jury to determine: *Hightstone v. Burdette*, 54 M. 329.

30. In ejectment between tenants in common it was held incumbent for plaintiff to prove ouster within the period of the statute of limitations, and that if he introduced evidence tending to that effect then the burden was shifted upon defendant to prove an actual ouster anterior to that period: *Ibid.*

(d) *Conveyances and contracts.*

31. A tenant in common cannot restrain his co-tenant from disposing of his interest to absentees or irresponsible persons: *People v. Detroit City Treasurer*, 8 M. 14.

32. Where an inheritance consists of several distinct freeholds, a tenant in common may convey his undivided interest in any one or more of them, and it may be sold on execution without reference to any of the other parcels: *Butler v. Roys*, 25 M. 53.

33. Without his co-tenants' consent one tenant cannot convey by metes and bounds a particular part as his share of the tract held in common: *Campau v. Godfrey*, 18 M. 27.

34. A conveyance by one tenant in common of a certain specified portion of the joint estate held in common is, at the furthest, voidable only as to the co-tenants, while it operates as an estoppel against the grantor and those claiming under him: *Draper v. Williams*, 2 M. 536.

As to effect of one tenant's grant to railroad of right of way as to his interest over the common estate, see RAILROADS, § 126.

35. A conveyance by one of two tenants in common of his interest in a tract of land will not necessarily terminate an authority derived from his co-tenant to sell timber on the tract: *Wetherbee v. Green*, 22 M. 311.

36. A contract whereby one tenant in common employs a person to cut timber on the common property is not on its face void because not showing the consent of the other owners. It will be presumed, if necessary to sustain it, that the consent of the others was had or was expected to be obtained: *Barton v. Gray*, 48 M. 164.

37. A minor son, occupying land as tenant in common with his mother and sister, has no right in himself, without their authority, to give, sell or otherwise transfer the timber on the land to a stranger or assent to his entry on the land to remove it. And for such entry the tenants in common can maintain trespass: *Richey v. Brown*, 58 M. 435.

38. A tenant in common sold his undivided interest to a third person, taking back a mortgage for the purchase money. His vendee and the co-tenant then made a voluntary partition, the vendee taking half and quitclaiming the other half which the co-tenant took, giving to the vendee a warranty deed of the first half and paying him \$75 as the difference in value of the two parcels. Held, that no liability to pay the mortgage arose from the covenant in such warranty deed, but that the lien was simply transferred to the mort-

gager's half of the premises, which thus became the primary security for the payment of the debt, and should have been first sold for that purpose: *Webb v. Rowe*, 35 M. 58.

39. An agreement whereby property owned in common is put in the name of one of the owners, to be held by him as trustee for the benefit of all parties, "subject to such decisions as the party may direct from time to time," gives him no right to sell the whole without the consent of all the owners; and a sale to a purchaser with notice conveys no more than the trustee's personal interest: *Palmer v. Williams*, 24 M. 328.

40. The fact that one acting in the sale of lands for himself and his co-tenants was instructed by the latter not to sell by the acre does not affect the right of a purchaser who bought that way to hold him liable for fraud in misrepresenting the quantity: *Starkweather v. Benjamin*, 32 M. 305.

(e) *Mortgages.*

41. A tenant in common of real estate can mortgage his interest to secure his individual indebtedness unless the real estate is partnership property: *Ruppe v. Steinbach*, 48 M. 465; *Gordon v. Gordon*, 49 M. 501.

42. And where the record title of two or more persons in the same land is that of tenants in common simply, a mortgagee from one without actual notice that the land is partnership property, or was bought with partnership funds, is not affected by undisclosed partnership equities or arrangements, even though a firm composed of the co-owners is using such land in a way, however, not inconsistent with the individual ownership of each as tenant in common: *Hammond v. Paxton*, 58 M. 393; *Reynolds v. Ruckman*, 35 M. 80; *Adams v. Bradley*, 12 M. 346.

43. Mortgages placed by tenants in common upon lands of which a partnership composed of such tenants has the use only do not cover trade fixtures set up by the partners: *Robertson v. Corsett*, 39 M. 777.

44. Where one of two tenants in common has paid his share of a joint mortgage, and the other has mortgaged his portion a second time, the former is entitled to a discharge, and the later mortgagee cannot have the first mortgage satisfied from the joint property, or postponed to his own on the ground that the release is in fraud of his right: *Southworth v. Parker*, 41 M. 198.

45. A mortgage given by two tenants in common was assigned, and the assignee, in collusion with one of the mortgagors, so fore-

closed it by advertisement as to deprive the other of his opportunity to redeem. *Held*, that the latter would be entitled to relief in chancery had he not barred himself by laches and by receiving his share of the surplus: *Norton v. Tharp*, 53 M. 146.

II. OF PERSONAL PROPERTY.

(a) *In general.*

46. Part owners of a vessel are tenants in common: *Sheehan v. Dalrymple*, 19 M. 239; *Wetherell v. Spencer*, 3 M. 123.

47. Successive mortgagees agreeing that their liens shall stand on an equal footing become, after default and taking possession, tenants in common of the securities and the mortgaged chattels, and may jointly bring trespass for interference: *Densmore v. Mathews*, 58 M. 616.

48. Where securities are taken by husband and wife in their joint names, each having invested equally, the wife on her husband's death does not take by survivorship: *Wait v. Bovee*, 35 M. 425.

49. A conveyance of a chattel interest to two persons does not necessarily give them equal rights therein, and their actual interests as between themselves may be shown: *Harrison v. Ingersoll*, 56 M. 36.

50. A sale to two persons is presumed to inure to them equally, in the absence of a showing; and any one who knows of such an interest must know that it can only be transferred by its owner or by some one acting by the owner's authority: *Keables v. Christie*, 47 M. 595.

51. Where an owner of an undivided interest in goods mortgages them, an agreement by the other owner to pay the mortgage or an actual part payment will not of itself bring his own interest within the mortgage: *Ibid*.

52. The mixture, by consent, of grain of the same kind and value does not affect the right of property of either owner in his aliquot portion as against the other: *Erwin v. Clark*, 18 M. 10.

And further as to confusion of goods, see ACCESSION, ETC., §§ 4-21.

53. The authority of one co-tenant to make affidavit for civil warrant for wrongful conversion is presumed: *Deitz v. Groesbeck*, 33 M. 308.

(b) *Ouster and conversion; remedies.*

54. The assertion by a tenant in common in possession of the right of possession merely does not constitute a conversion; but a dis-

inct claim of entire ownership, coupled with a refusal to recognize his co-tenant's rights amounts to an ouster and conversion and sustains trover: *Bray v. Bray*, 30 M. 479; *Grove v. Wise*, 39 M. 161.

55. If one tenant in common disposes of the property to his own use it is a conversion, and he is liable in trover for the value of his co-tenant's share: *Webb v. Mann*, 3 M. 189; *Ripley v. Davis*, 15 M. 75.

56. One J. put in wheat on shares on defendant's lands, and was to have possession of the land, and do other farm duties upon shares of other produce. As there was no proof that it was agreed that J.'s rights in the crops should be forfeited by non-fulfilment of any other conditions, and no evidence of damages from any such non-fulfilment, it was held, in a controversy between defendant and plaintiffs, to whom J. had mortgaged the crops while growing, that J. was clearly tenant in common of the crops: *Fiquet v. Allison*, 12 M. 328.

57. When the crops were ripened plaintiffs harvested them, but defendant threshed them, put them in his granary and refused to recognize any rights of plaintiffs therein. Held, that he was liable to plaintiffs for the value of their share in *assumpsit*: *Ibid*.

58. Where, after cancellation of a lease, the landlord told the tenant to put in and harvest wheat, promising that he should have his lawful share, they were tenants in common of the wheat, and if the landlord harvested and kept the wheat the tenant could maintain *assumpsit* on the common counts for his share: *McLaughlin v. Salley*, 46 M. 219.

59. One who has let a farm upon the lessee's agreement to deliver half the produce as rent is a tenant in common in respect to such produce, and can bring replevin for his share if the lessee refuses to deliver it after it is in condition: *Sutherland v. Carter*, 52 M. 471.

60. Where a farm was let on shares so that the parties were tenants in common of a crop of wheat, and where the lessee denied any right of the lessor to the harvested wheat about to be threshed, and refused to divide according to his agreement, it was held that the lessor could bring replevin for his share even though it was not threshed, and that the number of bushels named in the writ must be construed as referring to the quantity to be taken and not to the condition the grain was in after harvesting: *Wattles v. Dubois*, 67 M. 813 (Oct. 20, '87).

61. Tenants in common being equally entitled to possession, one cannot replevy from

another a specific chattel: *Wetherell v. Spencer*, 8 M. 123; *Kindy v. Green*, 32 M. 810.

62. Especially where plaintiff has mortgaged his undivided interest to his co-tenant and has made no offer to redeem: *Kline v. Kline*, 49 M. 419.

63. Where A. and B. own lands in undivided interests one cannot maintain replevin against the other for logs cut from those lands: *Busch v. Nester*, 70 M. 525.

64. Where the defendant in replevin does not have or claim any interest in the other undivided portion of the personalty sued for he cannot raise the question that it was not divided before the writ issued: *Crapo v. Seybold*, 36 M. 444.

65. And a tenant in common who is entitled to the possession of an undivided interest may bring replevin against a wrong-doer who is a stranger to the title: *McArthur v. Oliver*, 60 M. 605.

66. One cannot maintain replevin for timber cut from lands to which he shows title to an undivided half only and does not show possession: *Hess v. Griggs*, 43 M. 397.

67. A tenant in common can bring trespass against a co-tenant who has wrongfully converted the common property: *McClure v. Thorpe*, 68 M. 33.

68. Where the lessor deprives the lessee of the use of the crop the latter may recover the crop, less the lessor's share under the lease; if the crop is depreciated through the lessor's negligence, the lessee may recover the amount of the depreciation less the lessor's labor in caring for and harvesting the crop: *Ibid*.

69. One tenant in common cannot bring trespass for a partial injury by his co-tenant to the common property: *Wells v. Hollenbeck*, 37 M. 504.

TENDER.

I. WHEN NECESSARY.

II. SUFFICIENCY.

- (a) *In general.*
- (b) *By and to whom.*
- (c) *Time and place.*
- (d) *Conditions.*
- (e) *Keeping tender good.*
- (f) *Objections.*

III. EFFECT OF TENDER.

IV. TENDER AFTER SUIT BROUGHT.

I. WHEN NECESSARY.

1. A party who declares positively, when another offers to pay him an alleged claim on behalf of a third person, that nothing is due

him and that he will accept no money, thereby excuses any tender, and cannot afterward object that money was not particularly counted out and presented to him: *Lacy v. Wilson*, 24 M. 479.

2. Where a landlord elects to renew a lease, tender of a new lease is unnecessary if the tenant has declared that he will not accept a renewal: *Darling v. Hoban*, 58 M. 599.

3. In suit for the price of land conveyed to defendant by quitclaim, tender of reconveyance is unnecessary to admit defence that plaintiff falsely and fraudulently represented that he owned the land, whereas he had no title: *Reeves v. Kelly*, 30 M. 132.

4. Tender of performance by the vendee in a land contract is unnecessary prior to suit to recover back money paid on the contract where the vendor cannot make out title: *Wright v. Dickinson*, 67 M. 580.

5. A grantee by quitclaim need not tender reconveyance before suing his grantor for obtaining grantee's money by false representations as to title: *Stockham v. Cheney*, 62 M. 10.

6. But reconveyance must be tendered before one to whom land has been conveyed in exchange for goods can seek to repudiate the bargain for fraud and replevy the goods: *Wilbur v. Flood*, 16 M. 40.

7. Boot-money need not be tendered back before suing for breach of the implied warranty in a contract for the exchange of property: *Hunt v. Sackett*, 31 M. 18.

8. Before one who claims to have been defrauded by a compromise can sue upon the original contract he must tender back what he has received upon such compromise: *Pangborn v. Continental Ins. Co.*, 67 M. 683 (Jan. 5, '88).

9. In a particular case plaintiff's omission to tender back money received from a benefit fund before suit in repudiation of a release and discharge was held unimportant: *O'Neil v. Lake Superior Iron Co.*, 68 M. 690.

10. Tender back of amount received by principal from agent on sale to latter, who concealed facts, held unnecessary before suit to recover from latter excess received on sale to third party: *Moore v. Mandlebaum*, 8 M. 483.

11. Neglect to tender a reward offered for lost goods does not prevent replevying them from the finder: *Wood v. Pierson*, 45 M. 313.

12. Vendee's failure to tender performance before filing bill for specific performance of land contract affects costs only: *Morris v. Hoyt*, 11 M. 9.

13. Delay beyond a reasonable time by the vendor in a land contract in tendering deed is

unimportant where the vendee retains general control of the land and makes no attempt to rescind: *Curran v. Rogers*, 35 M. 221.

14. Tender of the amount of a lien for keeping a horse need not be made before replevin by the holder of a valid prior chattel mortgage: *Reynolds v. Case*, 60 M. 76.

15. No formal tender to the holder of an invalid tax-title is required before filing a bill to remove such title (allegation of a certain offer held sufficient, see EQUITY, § 811): *Hanscom v. Hinman*, 30 M. 419.

That one who seeks equitable relief against excessive tax should tender what is just, see TAXES, §§ 556-562.

Waiver of tender of unearned premium to cancel policy, see INSURANCE, § 107.

Costs denied complainant for failure to make tender, see COSTS, § 234.

II. SUFFICIENCY.

(a) *In general.*

16. A tender must be of the full amount due; a partial tender is operative only when the creditor consents to receive it: *Coots v. McConnell*, 39 M. 742.

17. An insufficient tender is of no avail: *Montague v. Dougan*, 68 M. 98.

18. A tender in United States treasury notes is good if no objection is taken at the time to their being regarded as money: *Fosdick v. Van Huse*, 21 M. 567.

19. A tender made in greenbacks and fractional United States currency is sufficient, especially where no objection is made to it at the time: *Beebe v. Knapp*, 28 M. 53.

20. Evidence that tender was made in legal-tender greenbacks cannot be objected to on the score that the only proper course was to produce the thing tendered: *Ibid.*

21. One dollar in money is in law equivalent to any other dollar, and in tendering back money in rescinding a transaction it is immaterial whether or not the bills tendered back are the identical ones received: *M. C. R. Co. v. Dunham*, 30 M. 128.

22. A tender partly in money which is not a legal tender need not be accepted: *Richards v. White*, 44 M. 622.

23. A tender partly in bank-notes cannot be insisted on if rejected for that reason: *Waldron v. Murphy*, 40 M. 663.

24. A tender of current bank-bills to a constable holding an execution would protect the defendant in the execution against the creditor, unless they were refused as not being constitutional money: *Welch v. Frost*, 1 M. 30.

25. A tender need not be divided to meet separate claims where they are all held by one person. Where more is demanded than is due the person making the tender cannot be put in the wrong by requiring him at his peril to separate just from unjust charges: *Johnson v. Cranage*, 45 M. 14.

26. A tender for the purpose of cancelling a judgment should include both damages and costs. A tender of damages with the clerk's receipt for the costs is not sufficient: *Thurber v. Jewett*, 8 M. 295.

27. A mere offer to pay whatever shall be ascertained to be necessary to discharge a litigated demand without taking any steps to find out beyond preparing a receipt in blank purporting to discharge the judgment when in fact none has been entered is no proper tender of payment: *Chase v. Welsh*, 45 M. 345.

28. A tender of simple interest is not necessarily sufficient after default in payments on land contract: *Richards v. White*, 44 M. 623.

29. One who seeks to obtain the discharge of a chattel mortgage or an assignment thereof or subrogation to the mortgagee's rights must tender not only the amount due on the mortgage but the expenses already necessarily incurred towards foreclosing it: *Shutes v. Woodard*, 57 M. 213.

30. Where a mortgagee of chattels after abating his claim assigns the mortgage to a third person who pays him what he demands, and the assignee holds the mortgage for the amount that he has paid with interest, a tender of that amount will discharge the lien and give the mortgager plenary right of possession, which will not depend on keeping the tender good: *Stewart v. Brown*, 48 M. 383.

31. A tender by one tenant in common was held insufficient on a bill in equity to avoid a collusive foreclosure, because it did not include the whole amount of the surplus but only his share: *Norton v. Tharp*, 53 M. 146.

32. The evidence in support of a tender should be very clear and satisfactory, and should place the other party distinctly in the wrong where the discharge of a mortgage is demanded on the ground thereof: *Potts v. Plaisted*, 30 M. 149; *Engle v. Hall*, 45 M. 57.

33. And in such cases the tender should be fair and distinct, without mystery or ambiguity, and should not be so made as to lead the mortgagee to believe that the purpose is to buy up the security: *Proctor v. Robinson*, 35 M. 284.

34. Tender of performance of an agreement will not operate to extinguish the lien by which the agreement is secured if it is not unequivocal and reasonably capable of being

understood by the other party as a *bona fide* tender of the requisite thing, act or service; and the offer itself should be accompanied by circumstances fairly implying control of the necessary means, and possession of the necessary ability to fulfill it: *Selby v. Hurd*, 51 M. 1.

35. Leaving deed at agreed place and time, other party not appearing, held a sufficient tender (see SPECIFIC PERFORMANCE, § 155): *Daily v. Litchfield*, 10 M. 29.

As to sufficiency of tender to boom company, see LIENS, § 108.

(b) *By and to whom.*

36. A tender is properly refused if made by one who is a stranger to the transaction between the parties, who has no rights therein and who does not act in the interest or at the request of the debtor or obligor: *Sinclair v. Learned*, 51 M. 335.

37. So a mortgagee may refuse a tender made by one who merely holds by a tax-deed not subject to the mortgage: *Ibid*.

38. A creditor cannot lawfully refuse a tender by an agent duly authorized, if he has reasonable opportunity to learn the agent's authority: *Eslow v. Mitchell*, 26 M. 500.

39. The tender of a title which satisfies in other respects the requirements of a stipulation in a land contract is not objectionable because coming not directly from the party to the contract but from a third person: *Kimball v. Goodburn*, 32 M. 10.

40. A tender to be valid must be made to the creditor or some one authorized to act for him. It is insufficient if made to a mere servant of the creditor: *Thurber v. Jewett*, 8 M. 295.

41. Where two persons are both interested, a tender to either is sufficient, especially if both are present. The question whether such a tender was to one or the other or both may go to the jury if material: *Beebe v. Knapp*, 28 M. 53.

(c) *Time and place.*

42. A person to whom a tender is made is allowed a reasonable time to ascertain his rights and to compute the amount due: *Potts v. Plaisted*, 30 M. 149; *Proctor v. Robinson*, 35 M. 284; *Root v. Bradley*, 49 M. 27; *Post v. Springsted*, 49 M. 90.

43. A tender made without notice at an unfit place may be properly declined until the creditor can have reasonable time to examine the account: *Waldron v. Murphy*, 40 M. 668; *Parks v. Allen*, 42 M. 482.

44. A tender to satisfy a claim in litigation is not good if made in the street without any computation or means of computation that would not require delay, and on the idea that the claim is in judgment, when no judgment has been entered, and when no costs have been or could regularly have been taxed: *Chase v. Welsh*, 45 M. 345.

(d) *Conditions.*

45. A tender may be coupled with such conditions as the party making it has a right to impose; such as that he shall receive what a payment or tender legally made would entitle him to: *Johnson v. Cranage*, 45 M. 14; *Brink v. Freoff*, 40 M. 610, 44 M. 69.

46. But a tender coupled with an improper condition does not operate to put the other party in fault: *Wilson v. Wagar*, 26 M. 452.

47. And such a tender cannot destroy a security accompanying the debt sought to be paid: *Dodge v. Brewer*, 81 M. 227.

48. A tender coupled with a claim of an allowance not lawfully demandable will not discharge a security: *Sager v. Tupper*, 35 M. 184.

49. A tender of payment of a mortgage should be absolute and unconditional, not dependent on the mortgagee's first executing a receipt or discharge: *Potts v. Plaisted*, 30 M. 149.

50. Where a tender, sufficient in amount to discharge a mechanic's lien for the repair of personal property, was made on condition that the property be delivered up, and the only objection made to the tender was that the amount was insufficient, *held*, that the tender was not vitiated by the condition: *Moynahan v. Moore*, 9 M. 9.

(e) *Keeping tender good.*

51. One who sends a check in payment, which is rejected by the other party, and who thereupon receives it back, cannot claim the benefit of a formal tender, even though previous payments in the same matter were made in the same way and were received without objection; and this is especially so where nothing was done afterwards that would have kept good a formal tender had one been made: *Browning v. Crouse*, 40 M. 339.

52. When a vendee, under a land contract, tenders money in performance of his obligation, the vendor has no right to the money except upon the condition of a simultaneous delivery of the deed; and therefore, in an action against the vendor for the breach of such

a contract, it is not necessary to show that the tender has been kept good: *Allen v. Atkinson*, 21 M. 351.

53. One who makes a sufficient tender to discharge a mechanic's lien for the repair of personal property, and then brings replevin for the property, is not obliged, in order to keep the tender good, to bring the money into court. The lien being discharged by the tender the lien-holder must thereafter rely upon his employer's personal responsibility: *Moynahan v. Moore*, 9 M. 9.

54. A sufficient tender of the amount due upon a mortgage having been made, it need not be kept good in order to discharge the mortgage and to defeat foreclosure: *Caruthers v. Humphrey*, 12 M. 270; *Van Husan v. Kanouse*, 18 M. 308; *Potts v. Plaisted*, 30 M. 149.

55. The right to the production in court of a money tender is presumed to have been waived if it was not called for; and in a case made, where only so much of the record is given as the parties see fit, its non-production will not be presumed for the purpose of establishing error in the proceedings: *Wetherbee v. Kusterer*, 41 M. 359.

56. Where a second mortgagee on seeking to redeem from a prior mortgage tendered the proper amount on demanding an assignment of the mortgage, and renewed the tender when the senior mortgagee began foreclosure proceedings, it was *held* that he was not justly chargeable with costs for omitting to keep good the tender in a bill to enforce his right to redeem: *Lamb v. Jeffrey*, 41 M. 719, 47 M. 28.

(f) *Objections.*

57. Objection to the mode of tender must be made at the time of the tender: *Browning v. Crouse*, 40 M. 339.

58. The holder of a security upon which a party authorized makes a tender is not concerned where or on what terms the person tendering the money obtained it so long as he could have got payment by accepting the tender: *Eslow v. Mitchell*, 26 M. 500.

59. Where the tender of security required by a contract was refused upon some other ground than that it was not made payable at the proper time, it was presumed, in the absence of any showing to the contrary, that the time of payment was according to the contract: *Wilson v. Wagar*, 26 M. 452.

60. Where a tender was made upon a chattel mortgage of an award and a stated amount in money, and the amount in money, through

an error in computation, was too small, but the mortgagee supposed it to be correct and refused the tender, not on that ground, but because he claimed that he was not bound to receive the award, the fact of the deficiency in money was not allowed to prejudice the mortgager when the award was held good on bill to redeem: *Flanders v. Chamberlain*, 24 M. 305.

III. EFFECT OF TENDER.

61. When tender is regular and is completed by payment into court a verdict for the amount of it is not proper: *Wetherbee v. Kusterer*, 41 M. 359.

62. Tender of payment to creditor of money due on note discharges a guarantor: *Sears v. Van Dusen*, 25 M. 851.

63. Tender to a carrier of the freight, less damage done to the goods, discharges the lien for freight: *Bancroft v. Peters*, 4 M. 619.

64. A tender, regularly and lawfully made, discharges a lien, and while the debt is not thereby discharged without payment, yet the security is destroyed at once: *Fuller v. Parrish*, 3 M. 211; *Moynahan v. Moore*, 9 M. 9; *Caruthers v. Humphrey*, 12 M. 270; *Van Hulan v. Kanouse*, 13 M. 308; *Flanders v. Chamberlain*, 24 M. 305; *Eslow v. Mitchell*, 26 M. 500; *Potts v. Plaisted*, 30 M. 149; *Sager v. Tupper*, 35 M. 134; *Fry v. Russell*, 35 M. 229; *Stewart v. Brown*, 48 M. 383.

65. A mortgagee's lien is lost by evading tender of payment: *Ferguson v. Popp*, 42 M. 115.

66. If the refusal to accept a tender is not absolute or unreasonable does not necessarily discharge a security: *Waldron v. Murphy*, 40 M. 668.

67. A tender stops interest, but does not discharge the debt: *Cowles v. Marble*, 87 M. 158.

68. A sufficient tender stops interest: *Jones v. Shaw*, 56 M. 332.

69. By tender and payment into court defendant admits that he owes the sum tendered and paid, and that plaintiff is entitled to it; and defendant cannot regain it though it should turn out that he was not indebted at all: *Thompson v. Townsend*, 41 M. 346.

70. Tender by defendant of an amount actually due is not an admission of indebtedness to a larger amount claimed by plaintiff: *Kennedy v. Nims*, 52 M. 153.

71. In an action for the price of running logs it appeared that a third person not a party to the action bought the greater part of the logs from defendant, and that it was arranged between plaintiffs and defendant that such

third person should pay plaintiffs, retaining the amount out of the purchase money due defendant. *Held*, that a tender by such third person to plaintiffs was a tender by and on behalf of defendant and would not make such third person plaintiff's debtor or discharge defendant's liability: *Keystone Lumber, etc. Co. v. Jenkinson*, 69 M. 220.

72. One who bases his claim to relief on a tender made and kept good must keep to his offer and cannot raise the question of usury: *Canfield v. Conkling*, 41 M. 371.

73. Where a chattel mortgagee has wrongfully sold the goods and parted with their possession, a tender by the mortgager of the amount due, together with a demand for return of the goods, is a mere idle ceremony and does not affect the position of the parties: *Brink v. Freoff*, 40 M. 610, 44 M. 69.

74. Where a tender of the amount due on a purchase-money mortgage was refused because it did not include the amount of an attorney fee claimed to be due, but afterwards the party waived such fee and offered a discharge which was accepted, the mortgager saying he would take his own time to pay in, *held*, that this was a recognition of the mortgagee's right to payment, and that the amount was recoverable under the common counts: *Fry v. Russell*, 35 M. 229.

75. Where defendant had tendered the difference between the claim against him and a set-off to which he was entitled, and had kept his tender good, costs of all courts were deducted from the judgment against him: *Smith v. Curtiss*, 38 M. 398.

76. Refusal by the owner of lands sought to be condemned for railroad use to accept a tender does not put him in fault so as to deprive him of costs or subject him to costs: *Toledo, A. A. & G. T. R. Co. v. Dunlap*, 47 M. 456.

77. The tender of money as rent, after a dispute as to the existence of an agreement to lease, does not tend to prove the agreement: *Gilbert v. Kennedy*, 22 M. 117.

Effect of tender as discharging ATTACHMENT, see that title, § 119.

IV. TENDER AFTER SUIT BROUGHT.

78. Whether in an action for the breach of a contract and not for a sum certain the defendant may tender a sum in satisfaction under the statute after suit brought, *quere*. Where he offered evidence of such a tender which the court excluded, and the jury returned a verdict for a larger sum, *held*, that whether the evidence was admissible or not,

yet as the verdict showed he was not injured by its exclusion the judgment would not be disturbed: *Hollister v. Brown*, 19 M. 163.

79. Where in a suit in a justice's court for unliquidated damages the defendant has made a tender of a sum of money on the trial, and on its being refused has paid it into court, the acceptance of this money from the justice by the plaintiffs after judgment and appeal is not a bar to a recovery of a larger sum under the pending issue upon the appeal on the basis of an accepted tender in court; and where by the rulings the defendant is allowed the benefit of the money so received by plaintiffs as payment in the claim in suit, he is not damnified: *McKercher v. Curtis*, 85 M. 478.

80. The effect of a tender made during suit or before judgment must always depend more or less on the views of the court, and rarely affects anything but the liability for costs. It cannot discharge the debt until paid: *Chase v. Welsh*, 45 M. 345.

81. Tender after suit brought must conform to H. S. §§ 7764-65, which does not allow it to bar further prosecution, but only to stop interest and costs and subject the plaintiff to subsequent costs, and contemplates that it may be shown on the trial: *Snyder v. Quarton*, 47 M. 211.

82. Plaintiff sued in the circuit court for \$175. Defendant tendered and paid into court and plaintiff took out of court the sum of \$155. Held, that if plaintiff failed to prove herself entitled to more than \$155, defendant should have full costs; but if she proved a right to more than that sum she should have full costs: *Thompson v. Townsend*, 41 M. 846.

83. Tender of amount due before a particular inquisition in chancery justifies deduction of the costs of such inquisition from the amount found: *Tucker v. Tucker*, 27 M. 204.

TIME.

1. Fractions of a day are not as a general rule regarded in computing time: *Sherlock v. Thayer*, 4 M. 355; *Draper v. Tooker*, 16 M. 74; *Blanck v. Ingham Circuit Judge*, 44 M. 98; *Griffin v. Forrest*, 49 M. 309; *Angell v. Pickard*, 61 M. 561; *People v. Cox*, 70 M. 247 (May 11, '88).

2. Yet the law recognizes parts of a day in a question of fact involving the possession of property: *Angell v. Pickard*, 61 M. 561.

3. Where a date is given both as a day of the week and a day of the month, and the two are inconsistent, the day of the month must govern: *Ingersoll v. Kirby*, W. 27.

4. When time is to be computed "from" or "next after" a date or act done the day of the date or act is not to be counted: *Sallee v. Ireland*, 9 M. 154; *Gorham v. Wing*, 10 M. 486; *Warren v. Slade*, 23 M. 1; *Everts v. Fisk*, 44 M. 515.

5. If an act is to be done a certain number of days before a given day, that day is not to be counted: *Sallee v. Ireland*, 9 M. 154.

6. Where a statute prescribes that a process or notice shall be served a certain number of days before the return day or before the day of hearing, both the day of service and the day of the return or hearing must be excluded in computing the time: *Dousman v. O'Malley*, 1 D. 450; *Sallee v. Ireland*, 9 M. 154; *Arnold v. Nye*, 23 M. 286; *Powers' Appeal*, 29 M. 504; *Platt v. Highway Commissioner*, 88 M. 247; *Taylor v. Burnap*, 39 M. 739; *Lane v. Burnap*, 39 M. 736; *Everts v. Fisk*, 44 M. 515.

7. The mode of computing time under rules of practice is always exclusive of the first day, unless the peculiar wording of the rule would include it: *Warren v. Slade*, 23 M. 1.

8. The general rule in regard to notices includes the day of performance and excludes the day from which notice begins to run. So, where publication for twelve weeks is required, the day of the first publication is not counted, while that of sale is: *Gantz v. Toles*, 40 M. 725.

9. A statutory requirement of a notice "at least ten days before the making of the application" means only that notice shall be given as early as the tenth day before the application is made. The computation excludes the first and includes the last day, taking no notice of fractions: *Arnold v. Nye*, 23 M. 286; *Eaton v. Peck*, 26 M. 57.

10. Where, by court rule, a writ may be made returnable in not less than twenty days, the date of issue is excluded and that of return included; a writ issued August 30 is properly made returnable September 19: *Doyle v. Mizner*, 41 M. 549.

11. Where the statute requires an act to be done within a certain number of days (not less than a week) Sunday must be reckoned as one day though it happens to be the last day; and action that must be taken within forty days cannot be taken on the forty-first day though the fortieth is Sunday: *Drake v. Andrews*, 2 M. 203.

12. In the construction of rules of court in relation to pleading and other mere matters of practice, if the last day falls on Sunday it seems the party has the whole of the next day to perform the act required: *Ibid*.

13. Where by statute an act is required to

be done in any number of days less than a week, it seems that an intervening Sunday is to be excluded: *Ibid*.

14. So, an intervening Sunday is not to be counted in the two days that must intervene between the issue and the return of a justice's short summons: *Simonson v. Durfee*, 50 M. 80.

15. But where the statute requires a justice to render judgment within four days, a judgment on the fifth day is void though the fourth day was Sunday: *Harrison v. Sager*, 27 M. 476.

16. And where an appeal from a justice is to be taken within five days after judgment, the fact that the fifth day is Sunday does not authorize an appeal on the sixth: *Dale v. Lavigne*, 81 M. 149.

17. In notices required by the rules of court, when Sunday is an intervening day it is to be included in computing the time: *Anderson v. Baughman*, 6 M. 298; *Corey v. Hiliker*, 15 M. 314.

18. An order of court requiring payment of money within a stated number of days means so many days after service, and it should be so stated: *Davis v. Davis*, 39 M. 221.

19. Where no time is prescribed in which an act required by statute is to be done, it must be done within a reasonable time: *Attorney-General v. Bank of Michigan*, H. 315.

Further as to time, reasonable time, Sunday, see those headings in the Index.

TOWNSHIPS.

- I. ORGANIZATION, DIVISION, ETC.
- II. POWERS.
- III. LIABILITIES.
- IV. RIGHTS AND DUTIES.
- V. MEETINGS AND RECORDS.
- VI. THE TOWN BOARD.
- VII. OFFICERS.
 - (a) *In general*.
 - (b) *Supervisor*.
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VIII. ACTIONS BY AND AGAINST.

Townships as factors in organizing new counties, see COUNTIES, §§ 1-6.

As to DRAINS and HIGHWAYS in townships, see those titles.

I. ORGANIZATION, DIVISION, ETC.

1. The legislature cannot deprive qualified voters of a county of the right of suffrage by organizing townships in a portion thereof

only, leaving the remainder unorganized: *People v. Maynard*, 15 M. 463.

2. A township is not completely organized for the assessment, levy and collection of taxes until the election of its proper officers: *Comins v. Harrisville*, 45 M. 442.

3. The constitutional power of the board of supervisors to organize new townships is subject to legislative restrictions; and the legislature in organizing a township may or may not authorize the board of supervisors to act; but in conferring authority upon the board it does not deprive itself of its original power, and any legislation inconsistent with the action of the supervisors avoids such action: *Attorney-General v. Marr*, 55 M. 445.

4. Therefore act 394 of 1879, discontinuing the township of Sherman, which was composed of four cornering sections taken from four cornering townships in Wexford county, was enough to invalidate the contemporaneous action of the board of supervisors in establishing the township of Concord, to consist in part of the former township of Sherman: *Ibid*.

5. The constitutional power of the board of supervisors to divide towns or to erect new ones, although such action would have the effect to change or alter the boundaries of a school district having a union school, is not abridged by a statute declaring that the boundaries of such districts shall not be changed without the written consent of the majority of the district board of the district: *People v. Ryan*, 19 M. 203.

6. Where, after the passage of an act organizing a township, the board of supervisors undertook to organize two other townships out of that organized by the legislature, on a petition which showed on its face that no freeholders of the township organized by the legislature joined in it, held, that such action could not stand in the way of the legislative organization: *Attorney-General v. Rice*, 64 M. 385.

7. The power of the board of supervisors to divide a township depends on the performance of the conditions of H. S. §§ 486, 487, without which there is no jurisdiction; and the board's action is void unless the statutory requirements as to the application—which must be signed by at least twelve freeholders of the township or townships to be affected—and as to the notice of such application are strictly complied with: *Scrafford v. Gladwin Supervisors*, 41 M. 647.

8. The notice must be posted and published during the four weeks immediately preceding the week in which the meeting of the board is

held; and it must state the time and place of the meeting, at least if the meeting is a special one. The proof of posting must state the time and place when and where the notices were posted: *Ibid.*

9. The "notice in writing" required by H. S. § 487 to be posted may be printed, and so, if properly authenticated, may the names attached thereto: *Pelton v. Ottawa Supervisors*, 53 M. 517.

10. In proceedings before boards of supervisors for organizing new townships, the strict rules of law governing the introduction of evidence in courts cannot be insisted upon. An affidavit of publication of notice of the application, made by the person who posted such notice, held sufficient if acted upon by the board: *Matthews v. Otsego Supervisors*, 48 M. 587. See EVIDENCE, § 880.

11. Where notices of the hearing of an application to alter township boundaries are shown to have been seasonably given, it is immaterial that an affidavit showing that the notices were posted on different specified days does not show on which day the first was posted: *Pelton v. Ottawa Supervisors*, 52 M. 517.

12. The map which petitioners for a change in township boundaries are required by H. S. § 486 to furnish to the board of supervisors need not show the full topography of all the townships to be affected; it is enough to give the boundaries and sections or parts of sections for each, together with the place and course of any natural boundaries, if any, that are to be established as limits: *Ibid.*

13. If a petition for the organization of a township is regular on its face, and is presented with due notice and in compliance with all legal requirements, the action of the board of supervisors upon it is political and final: *Attorney-General v. Page*, 38 M. 286.

As to review of organization, see CERTIORARI, §§ 86, 127, 128; QUO WARRANTO, §§ 14, 51.

14. An organization effected under a valid statute by the proper body of electors or officers is to be presumed regular where there has been a substantial compliance with the policy of the law: *Clement v. Everest*, 29 M. 19.

15. Where under a statute townships have been organized, and have acted and been recognized by the authorities for several years, it is too late to inquire into the validity of the statute providing for their organization: *People v. Maynard*, 15 M. 463.

16. When a corporate existence, irregular in its origin, becomes regular by lapse of time and public acquiescence, it cannot be dis-

puted: *Scrafford v. Gladwin Supervisors*, 41 M. 648.

17. But the state cannot be estopped by long acquiescence in the action of a board of supervisors establishing a township, no matter how regular such action, if in the original instance the board did not have the power to establish the particular township: *Attorney-General v. Marr*, 53 M. 446.

18. A township wholly within the limits of another, and illegally organized by the board of supervisors, can hardly be even a corporation *de facto*, since two corporations *de facto* cannot occupy the same ground at the same time, and all the authorities within the county have notice of the public acts of the board of supervisors: *Scrafford v. Gladwin Supervisors*, 41 M. 648.

19. A township continues in existence notwithstanding a part of its territory is detached by the division of the county in which it lies: but the territory cut off, until newly organized or attached to some other township, ceases to have any township existence: *People v. Maynard*, 15 M. 463.

20. Where the legislature, in setting off a new county from an old one, divided a township, but passed an act impliedly recognizing its continued existence in one of the counties and attaching the rest to a township in the other county, it was held that the township organization was not destroyed: *Bay County v. Bullock*, 51 M. 544.

21. A township's legal identity and property rights and liabilities remain unchanged after its division, so far as corporate existence is concerned, unless otherwise provided by statute: *Board of Health v. East Saginaw*, 45 M. 257; *Courtright v. Brooks Township Clerk*, 54 M. 182.

22. An unorganized county attached for judicial purposes to a township in an organized county is to be deemed a part of such township for all legal purposes: *Johnston v. Cathro*, 51 M. 80.

22a. Judicial notice is taken of a statute organizing a township and of the existence of a particular township: *Ives v. Kimball*, 1 M. 308; *La Grange v. Chapman*, 11 M. 499; *Wright v. Dunham*, 18 M. 414; *People v. Maynard*, 15 M. 463; *Bouchard v. Bourassa*, 57 M. 8; *People v. Waller*, 70 M. 237 (May 11, '88).

II. POWERS.

23. Towns are mere political organizations, created wholly by statute, for certain purposes of local government. They are vested with no franchises or special privileges for

their own benefit. They have only such powers as the statute confers, and are subject to no obligations except such as are derived from statutory provisions: *Niles Highway Commissioners v. Martin*, 4 M. 557.

24. Townships can exercise no powers except such as are expressly granted to them, or such as are fairly implied in or incident to those expressly granted, or such as are essential to the declared objects or purposes of the corporation: *Attorney-General v. Burrell*, 81 M. 25.

25. Under our constitution each township is a separate municipality, whose officers are elected by town residents and are themselves residents. One town or its officers cannot interfere with the management of public affairs in others, or levy taxes against them or their people; and power to do so cannot be inferred from general language in a statute: *Drain Commissioner v. Baxter*, 57 M. 127. And see DRAINS, §§ 6-8.

26. Where one township is set off from another it seems that the latter is entitled to assess, levy and collect township and school taxes until the organization of the former is completed by electing officers: *Comins v. Harrisville*, 45 M. 442.

27. One township is not authorized to bind another which has been set off from it in any proceeding upon a cause of action which arose before the division; and the latter township is not bound if it is not a party to the judgment: *Pierson v. Reynolds*, 49 M. 224.

28. In any proceeding for contribution between townships, one of which has been set off from another, the inquiry must always involve the actual existence and binding character of the obligation as existing at the time of the division: *Ibid.*

29. Where railroad aid-bonds were voted by a township with a condition precedent to their delivery that the road should not only be in running order, but an equivalent amount of the company's stock should be delivered to the township treasurer, and before this was done a new township was set off from the one which voted the bonds, it was held that until this exchange there were no contract relations with the company, and that, even if the bonds had been valid, a judgment against the old township for the amount could not bind the new township: *Beeman v. Black*, 49 M. 598.

30. The electors of a township voted at their annual meeting to raise a tax to buy land for a public common; it does not appear that any opposition was made — the tax was levied and collected without objection, and the land was conveyed to the township on the faith of

these proceedings and of an order of the township board for the amount of the purchase price. Held, that where a portion of the money has been paid over on such order, and the rest is in the hands of the township treasurer ready to be paid over, an injunction cannot lawfully be issued to restrain the payment of the residue, whether or not the electors were authorized to vote the tax, or the officers to levy it. The abuse of corporate power should be very clear to justify the state's exercise of its visitatorial authority upon a complaint made at so advanced a stage of the proceedings: *Attorney-General v. Burrell*, 81 M. 25.

31. The power conferred upon townships by H. S. § 670 to buy and hold land "for the public use of the inhabitants" is not confined to cases of absolute necessity for governmental purposes; under it the township may purchase and hold grounds for a public park, even within an incorporated village within the township. The enforcement of village police regulations over the grounds would not interfere with township control: *Ibid.*

32. The act of March 18, 1865, did not authorize the townships of Jackson county to refund advances for military bounties made by individuals on their own account and not in reliance upon some formal or informal action of the township or its authorities: *Miller v. Grandy*, 18 M. 540; *People v. Blackman*, 14 M. 336.

33. And, independently of statutory authority, any vote to refund such individual advances, or to assume individual undertakings to pay such bounties, is unauthorized and void: *Ibid.*

34. A township meeting cannot by vote of the electors audit private claims against the township: *People v. Onondaga Supervisor*, 16 M. 254.

35. The electors cannot vote money to reimburse the township treasurer for moneys stolen from him; nor can the legislature authorize the raising of money for that purpose: *Bristol v. Johnson*, 84 M. 128.

36. Under the statutes of 1838, townships had authority to vote to raise money for building bridges upon the report of the highway commissioners; also to raise money for the destruction of Canada thistles; also to raise a sum for contingent expenses generally, without specifying for what particular purposes: *Tread v. Metcalf*, 4 M. 579.

37. Act 98 of 1867, in empowering townships to raise money by tax or loan for repairing bridges, does not warrant resorting to both methods at one time to raise the full amount

which both together would produce. And if any voter votes for both modes of levy his ballots neutralize each other: *Loomis v. Rogers*, 53 M. 135.

38. The payment by the township authorities of money to employ a night-watchman in an unincorporated village forming part of the township, containing ten or twelve saloons, such payment being made from the liquor tax derived from such saloons, is not an illegal expenditure of township money: *Peninsula Iron Co. v. Crystal Falls*, 60 M. 510.

III. LIABILITIES.

39. A township charge is any fixed amount that is a fixed liability of the township and entitled to be paid. But the charges that the inhabitants of a township are authorized by H. S. § 671 to provide for by vote are not necessarily liabilities existing; they are merely estimated sources of expenditure which may or may not include fixed debts: *Marathon v. Oregon*, 8 M. 372.

40. And the term "township expenses" usually applies to the ordinary expenses of township government, and does not include expenditures for schools, to pay judgments, etc.: *Upton v. Kennedy*, 36 M. 215.

41. The county of C. issued bonds to aid in procuring enlistments in the army, and by resolution provided that each town might, if it saw fit, receive a number of the bonds proportioned to its quota of men to be raised. The towns took the bonds. *Held*, that each town must be regarded as borrowing the bonds, and must provide for the payment of those taken; and that any money paid by the county for principal or interest on a bond must be refunded by the township to which it was loaned: *People v. Porter*, 18 M. 101.

42. Although as to the holders the county would be debtor in such bonds, yet as between the county and the towns the latter would be principal debtors: *Ibid*.

43. Under C. L. 1871. §§ 927-936, authorizing the payment of bounties to volunteers, etc., the bonds provided for were on the footing of established liabilities against the township, and to be presented, like other claims for orders on the treasury, to the township board; and payment might be enforced, not by action against the township, but by *mandamus* against the town officers, in case of refusal to do their duty in this regard: *Dayton v. Rounds*, 27 M. 32.

44. Where after the division of a township the township boards have met and determined

the amount of indebtedness to be paid by the new township, such amount is a fixed and liquidated demand against such new township, which it is the duty of its township board to allow and to issue an order on the township treasurer therefor: *Marathon v. Oregon*, 8 M. 372.

45. If any power exists to review the proceedings of the board in making the adjustment it is by *certiorari*, and such remedy would be lost by lapse of time: *Ibid*.

46. Where the supervisors divided a township into two towns, giving to one a new name while the other retained the old, it was *held* that the old corporation remained in existence and was liable upon a judgment recovered against it after the division upon a tort that arose before, even though the statute was inadequate in such case for the enforcement of the old township's equities against the new (*mandamus* issued, see *MANDAMUS*, § 202): *Courtright v. Brooks Township Clerk*, 54 M. 182.

47. The legislature has no power to decide that a certain claim against a township is just and to direct a supervisor to levy a tax for its collection: *People v. Onondaga Supervisor*, 16 M. 254.

48. Boards of supervisors have no general power to establish claims in favor of the county against townships: *People v. Wright*, 19 M. 351.

49. A new township is not liable, under any general provision of the law, for the debts of a school district upon a part of whose territory it was erected, and from which it was thereby severed: *People v. Ryan*, 19 M. 203.

50. A township is not liable for interest on damages appraised for laying out highway: *People v. La Grange*, 2 M. 187.

51. A township was sued on the following instrument: "The commissioners of highways of the township of R. will pay the bearer twenty-two dollars when funds in road district number three and four;" dated, and signed by the commissioners. *Held*, that it was not a warrant or order upon the township treasurer under S. L. 1841, p. 149, § 5, but a draft drawn by the commissioners upon themselves, and that an action could not be sustained upon it against the township: *Monroe v. Rowland*, 1 M. 318.

52. The township board will not be compelled to levy a tax on the township for the payment of highway orders drawn upon its treasurer, payable out of moneys belonging to one of the road districts, where the township has not had the benefit of the district fund by

misappropriation or otherwise: *People v. Zilwaukie*, 10 M. 274.

53. Moneys raised by tax upon a township for a work of internal improvement, and to be applied thereto by a state board, are not township moneys, even though the township treasurer is the officer designated by law to collect them; and the treasurer, and not the township, is liable for them if collected: *Anderson v. Hill*, 54 M. 477.

54. Highway commissioners have no authority to involve the township in debt at their discretion for building bridges: *Hosier v. Higgins Township Board*, 45 M. 340.

55. A township cannot be held liable for a bridge built by a bidder to whom the contract therefor had been awarded but who failed to give the security required by H. S. § 1414 for the performance of the work, such bridge not having been accepted or used by the township: *Mackey v. Columbus*, 71 M. — (July 11, '88).

56. The use of a bridge by the people of a township when travelling upon a public highway cannot be construed as an act of acceptance of the work done in building the bridge: *Taymouth v. Koehler*, 35 M. 22.

57. A township is not bound by the joint action of its highway commissioner with one of another township in contracting for a bridge on that part of the highway between the two towns which had been allotted to the other town; nor does its knowledge that the work was going on or the use by its inhabitants of the bridge validate the contract: *Wrought Iron Bridge Co. v. Jasper*, 68 M. 441 (Feb. 2, '88).

58. A contract by highway commissioners to pay for a sewer in an incorporated village within its limits is void, and does not bind the township, nor does partial payment amount to a valid ratification: *Sault Ste. Marie Highway Commissioners v. Van Dusan*, 40 M. 429.

59. A township is not responsible for the defaults and misconduct of its drain commissioner in the performance of his statutory duties: *Dawson v. Aurelius*, 49 M. 479.

That a township has nothing to do with the money raised from drain taxes, cannot be sued therefor, and is not a proper defendant in a bill for relief against such taxes, see DRAINS, §§ 97-99, 107.

60. The township treasurer is an officer and agent of the township in collecting such taxes as would be retained in the township treasury after paying to the county treasurer the state and county taxes, and the township is liable to one who has been wrongfully taxed for the amount received from him, even though it has

been paid out from the township treasury on orders from the proper school and highway authorities. And township orders received in the township treasury as money on collection of taxes are equivalent to money and must be accounted for in the same way: *Byles v. Golden*, 53 M. 612.

61. *Mandamus* to compel the payment of a township order based on a settlement claimed to have been erroneous was limited to the amount conceded in the answer to be due, no issue of fact having been made: *Murphy v. Reeder*, 57 M. 419.

62. The costs and expenses of one who proceeds by information on his own account, and not by direction of the township, to establish his right to the office of supervisor, are a personal debt, and the township is under no legal liability to defray them or reimburse him with the amount: *Scott v. Bingham Township Board*, 33 M. 492.

63. Where a township collected taxes from liquor dealers within a village, which taxes the village was entitled to and might have collected, the township was held liable to the village; but, as it had used the money, present payment in money was excused, and the village was held, on *mandamus*, entitled to a township order: *Decatur v. Decatur Town Board*, 33 M. 335.

64. Where a township treasurer defaults in paying over money due the county, the township is liable to the county, but such liability is to be enforced by *mandamus* to have the amount of taxes re-assessed against the township; and this remedy is not barred by an adverse judgment in a suit on such treasurer's bond: *Hart v. Oceana*, 44 M. 417.

65. Nor is it a defence that the amount actually collected by the defaulter was less than the whole amount of local taxes which the township may retain before making payments to the county treasurer: *Oceana v. Hart*, 48 M. 319.

66. And the failure of the board of supervisors to add the sum to the next year's taxes does not cancel the township's liability; action may be taken subsequently, for H. S. § 1140 is directory only, and *mandamus* lies at any time within ten years: *Ibid*.

As to liability for injuries from non-repair of highways and bridges, see HIGHWAYS, §§ 176-219.

IV. RIGHTS AND DUTIES.

67. The townships adjacent to a city have no more legal dependence on it than have other townships, and they are equally entitled

to an independent existence: *Metropolitan Police Board v. Wayne Auditors*, 68 M. 576 (March 2, '88).

68. A township is not divested of the title to its cemetery or other property by reason of the incorporation of a city or village in such a manner as to include such property within its limits. H. S. § 793, providing that where a township is divided its burying-ground shall belong to the township in which it lies thereafter, does not apply: *Board of Health v. East Saginaw*, 45 M. 257.

69. Detaching territory from a township and annexing it to a city does not affect the township's ownership of anything but the land, unless the law provides for the transfer of other rights; if it does not, debts and other incorporeal rights, such as the right to unpaid liquor taxes due before the annexation, still belong to the township: *Springwells v. Wayne County Treasurer*, 58 M. 240.

70. Local equities between newly-organized townships set off from the same county should be speedily adjusted and with due respect to the deliberate settlements of the various local authorities: *Higgins v. Midland Supervisors*, 53 M. 16.

71. Upon the organization of a new county from territory detached from others, township school and road taxes should be accounted for by the county to which they were returned with the respective townships for which they were levied: *Clare County v. Auditor-General*, 41 M. 183.

72. Where a county remains by law liable to a township that has been set off from it, its act in compromising with a defaulting treasurer cannot be treated as an act of agency on behalf of the township and will not relieve it from any share of its liability: *Roscommon v. Midland Supervisors*, 49 M. 454.

73. Where the auditor-general, as such, pays money into the hands of a county treasurer as county money, the county must be regarded, as against the township, as having received it; and the treasurer is liable on his bond for his own defaults: *Ibid*.

74. In collecting and accounting for the liquor tax the county treasurer acts as the agent of the township and not of the county, and his failure to account for it does not warrant the township in withholding an equivalent amount from the county taxes: *Marquette v. Ishpeming City Treasurer*, 49 M. 244.

75. A statute detaching territory from a township and creating it into a city excludes the township from all jurisdiction over the territory thus cut off, and from holding any meetings — except as the act expressly provides — within the city limits: *People v. Knight*, 18 M. 424.

76. The general election is not a township meeting in any sense, and a statute authorizing a township to hold its annual meeting in a city would not authorize it to hold an election there: *Ibid*.

77. A statute fixing the time for notice of a meeting for a particular purpose supersedes so far the general statute fixing a different time: *Miller v. Grandy*, 18 M. 540.

78. A statute permitting the electors "at the annual or at some special meeting called for the purpose" to determine upon raising money for bounty purposes does not require special notice to be given in order to entitle such subject to be considered at the annual meeting: *Smith v. Crittenden*, 16 M. 152.

79. The record of a special township meeting, voting a tax or authorizing moneys to be raised to be paid by a tax or by a loan must show that all the statutory preliminary requirements to a legal meeting (H. S. §§ 696-699) had been complied with, and the holding of the meeting and the proceedings had: *Taymouth v. Koehler*, 35 M. 23; *Loomis v. Rogers*, 53 M. 185.

80. The township records should show whether a sum was voted either by meeting of the electors or by the township board for township purposes for a given year, and unless they do so a tax levied therefor is illegal: *Williams v. Mears*, 61 M. 86.

81. The record cannot be contradicted by parol, but parol evidence is admissible to show facts omitted: *Taymouth v. Koehler*, 35 M. 23.

82. Where no clerical mistake is shown, there can be no presumption against the express wording of a resolution of a township board levying a tax, and the record as to the purpose of the levy cannot be contradicted by parol: *Michigan Land, etc. Co. v. Republic*, 65 M. 638.

83. The records of township meetings are, however, to be liberally viewed, and all proper intendment made in favor of their regularity: *Taymouth v. Koehler*, 35 M. 23; *Lake Superior Ship Canal Co. v. Thompson*, 56 M. 493.

84. And where the law requires a majority vote of all electors present, it seems to be a sufficient record to state that "it was resolved," etc., without adding that it was by the affirmative vote of a majority of compe-

V. MEETINGS AND RECORDS.

Action legalized by statute although meeting not legally convened, see ARMY, § 2.

tent voters: *Lake Superior Ship Canal Co. v. Thompson*, 56 M. 493.

85. It seems that it is not essential that the record of the township meeting shall state in terms that the respective amounts of highway labor and money-tax were assessed as the statute requires; it is enough if it appears by reference to the highway commissioner's report: *Ibid*.

VI. THE TOWN BOARD.

86. Meetings of a township board, unless duly called and notified, are not legal if not attended by all the members: *Beaver Creek v. Hastings*, 52 M. 528.

87. When either of the members of a township board, as constituted under H. S. § 744, is interested in the subject for consideration, he is not "competent or able to act" in the sense of § 745, and such incompetency will justify the calling in of one of the remaining justices: *Stockwell v. White Lake*, 23 M. 341.

88. But this principle does not apply to the performance of official acts pertaining to the public interest in which he has no interest different from that of any other person: *Clement v. Everest*, 29 M. 19.

89. That the decision of the board may incidentally affect the interests of a person not a party who is a niece of a member of the board does not disqualify such member: *Hamtramck v. Holihan*, 46 M. 127.

90. The township board has power, in the absence of the town clerk, to appoint to act as secretary a justice of the peace summoned to act as a member of the board: *First National Bank v. St. Joseph*, 46 M. 526.

91. Where accounts between two townships are adjusted by their respective boards, one of the townships, in filing a bill to set aside the settlement, cannot distinguish itself from its board for the purpose of excusing laches; nor can it claim relief on the ground that its own board was inferior in ability or in knowledge of facts material to the settlement. Every township board is presumed competent to attend to the business it has to do, and in that respect to be equal in ability to any other board with which it deals: *Churchill v. Cummings*, 51 M. 446.

92. In general the presentation to the board of a claim against a township confers jurisdiction to decide whether the claim is a valid township charge or not; pleadings or formal papers are not required: *Wall v. Trumbull*, 16 M. 228.

93. When a statute authorizes the township

to vote to refund moneys advanced for bounties, and the township does so, and claims are presented under the act and vote, the township board acquires jurisdiction to determine whether a particular claim is within the law or not; and its determination is judicial, so that the allowance of an improper claim does not render the members liable: *Ibid*.

94. The presence of the claimant before the board is not necessary to the allowance of his account. Nor is it necessary that the account should be sworn to (though it must be in writing), or that it be proved by evidence under oath. The board may act upon its own knowledge of the demand, and if satisfied of its correctness that is enough: *Ibid*.

95. Where a township board assumes to pass upon and allow a class of claims over which the law gives it no jurisdiction—e. g., voluntary advances made by individuals to secure recruits—its allowance is void, and the supervisor and township clerk cannot be compelled by *mandamus* to issue orders thereon: *People v. Blackman*, 14 M. 386.

96. Under R. S. 1838 the township boards, independent of any vote of the electors, might raise money to pay claims audited and allowed against the townships: *Wisner v. Davenport*, 5 M. 501.

97. The board may vote and raise money to pay amounts found due from one township to another on a division or alteration of townships: *Marathon v. Oregon*, 8 M. 372.

98. The statute authorizing the township board to vote moneys to defray township expenses when the electors have neglected to do so does not specify at what time or within what time such vote shall be taken. It is only necessary that it be at a regular meeting: *Peninsula Iron Co. v. Crystal Falls*, 60 M. 510.

99. A township tax exceeding the amount voted by the township may be sustained on the presumption that the township board had exercised its statutory right to increase the amount, if there is no showing to the contrary: *Silsbee v. Stockle*, 44 M. 561.

100. Where the township board imposes a highway tax it represents the town meeting in doing so, and is confined to the same subjects of taxation: *Michigan Land & Iron Co. v. L'Anse*, 63 M. 700.

101. It is doubtful whether a supervisor can be allowed a fixed salary instead of his *per diem* pay; but a vote by the town board allowing a lump sum for compensation in fixing the annual tax was sustained as an estimate of the amount required: *Sawyer-Goodman Co. v. Crystal Falls*, 56 M. 597; *Penin-*

sula Iron, etc. Co. v. Crystal Falls, 60 M. 510.

102. The board will not be compelled by *mandamus* to repair a public bridge: *Perrine v. Hamlin*, 48 M. 641.

As to appeals to, in matters relating to highways and schools, see HIGHWAYS, XV; SCHOOLS, IV.

As to approval of liquor bonds, see INTOXICATING LIQUORS, V.

As to powers of township board of health, see BOARD OF HEALTH.

Removal by, of school officers, see SCHOOLS, III, (b).

That costs of proceedings to review official acts of board are collectible as town charges, see COSTS, § 272.

VII. OFFICERS.

(a) *In general.*

As to resignation, see OFFICERS, § 47.

103. Regulation of such township affairs as legally concern none but the people of the town cannot lawfully be vested in any officers imposed upon the township from without: *Hubbard v. Springwells*, 25 M. 153; *Wilcox v. Paddock*, 65 M. 23.

104. Township officers cannot be vested with jurisdiction in other townships than their own: *Drain Commissioner v. Baxter*, 57 M. 127.

105. Town officers can have no functions outside of their constitutional or statutory powers, and they cannot delegate their trusts to others: *Hubbard v. Springwells*, 25 M. 153.

(b) *Supervisor.*

As to boards of supervisors, see COUNTIES, III.

106. The supervisor of a township is a public officer whose duties and functions are prescribed by the statute; and the localities in which he may act are limited by the boundaries of his township and the county in which it lies: *Pack v. Greenbush*, 62 M. 122.

107. Where townships are set off from a county and organized into a new county the supervisors of those townships continue, it seems, in their offices under the new organization: *Carleton v. People*, 10 M. 250.

108. The supervisor has, officially, the absolute and exclusive right to the possession of the assessment rolls required to be kept in his office, and may sue in his official character to recover possession of them: *Phenix v. Clark*, 2 M. 327.

109. But his power over the roll ceases when in regular course it has passed into the treasurer's hands for collection: *Ferton v. Feller*, 33 M. 199.

110. In assessing a liquor tax which he has no right to assess, he is not entitled to compensation from his township: *Decatur v. Decatur Township Board*, 33 M. 335.

As to his duties as assessor, see TAXES, III.

As to his liability in tax matters, see TAXES, §§ 164, 165, 167-169; OFFICERS, § 189.

(c) *Clerk.*

111. A township clerk can certify papers legally in his custody, but he is not a member of the board of highway commissioners, and has no authority to take down and return on *certiorari* the evidence in a proceeding for an encroachment: *Roberts v. Cottrellville Highway Commissioners*, 24 M. 182, 25 M. 23.

112. Clerk held to have no authority to record action of highway commissioner assessing tax for highway labor: *Michigan Land, etc. Co. v. L'Anse*, 63 M. 700.

113. A township clerk has no authority by virtue of his office to sign the names of highway commissioners to an order on a township treasurer: *Just v. Wise*, 42 M. 573.

As to town clerk's certificate to supervisor, see TAXES, §§ 310-314.

As to effect of copies certified by, see EVIDENCE, §§ 1189-1191.

(d) *Treasurer.*

114. Where by a statute detaching territory from his township the treasurer is placed outside the town limits his office is vacated and he has no right to township moneys: *Youngblood v. Stellwagen*, 33 M. 1.

115. The treasurer's bond must be given to the township; and the latter cannot sue on a bond running to the people of the state: *La Grange v. Chapman*, 11 M. 499.

116. And the treasurer should be a party to and execute his bond; where he, though named as obligor, did not do so, the bond was held void as to the sureties: *Johnston v. Kimball*, 39 M. 187.

117. The relation between a township and its treasurer is that of creditor and debtor merely: *Monroe v. Whipple*, 56 M. 516.

118. Yet he is guilty of embezzlement if he misappropriates the town's funds and fraudulently refuses to account for them: *People v. Bringard*, 39 M. 22.

119. He is supposed to have the town's money at all times in his hands ready to be

paid out or paid over as required by law, and failure to pay out or over on demand is a conversion for which the town may sue him in trover: *Monroe v. Whipple*, 56 M. 516.

120. The township treasurer is the agent of the township in collecting taxes that are to be retained in its treasury and paid out on proper orders: *Byles v. Golden*, 52 M. 612.

121. The treasurer is bound to account either in money or in the return of unpaid taxes for the full amount of the levy put in his hands for collection: *Oceana v. Hart*, 48 M. 319.

122. In the absence of any error of law a judgment for defendant, a former township treasurer, upon a special finding by the jury that settlement was had with the town board each year and that he paid over the amount found due on the last settlement, was affirmed: *Monroe v. Whipple*, 62 M. 560.

123. A township is not estopped by the action of its board in settling with the treasurer from suing him for an additional amount afterwards found to be due and overlooked in the settlement: *Boardman v. Flagg*, 70 M. 372.

124. If the treasurer's liability for funds in his hands can be discharged by anything but payment, there must at least be an intentional acceptance of another's responsibility instead: *Rice v. Sidney*, 44 M. 37.

125. An entry by a town clerk carrying an apparent balance over from the account of one town treasurer to his successor is no evidence of the actual receipt of the money by the latter, even though his deputy had without his knowledge settled the account of the office accordingly: *Ibid.*

126. A township treasurer's sureties cannot be bound by a false settlement of his accounts: *Ibid.*

127. Sureties upon the official bond of a town treasurer for his second term of office only are not liable for the default of their principal during his first term: *Paw Paw v. Eggleston*, 25 M. 36.

128. A township treasurer who holds for a new school district a tax collected to pay its ascertained proportion of the value of school property in the district of which it was formerly a part cannot receive school orders on the old district for such tax; he cannot use the fund for any purpose except to pay it over to the new district; and if he does so he is liable to account for it as though never drawn out: *Midland School Districts*, 40 M. 551.

Further as to payment over of school and library moneys, see SCHOOLS, §§ 98-108.

As to town treasurer's duties and liabilities in tax matters, see TAXES, V, VI.

Compensation for collecting taxes, see OFFICERS, §§ 315-317.

Capacity as to drain taxes, see DRAINS, §§ 97, 98; EQUITY, § 248.

Mandamus to treasurer for payment of orders, see MANDAMUS, §§ 204, 205, 207.

VIII. ACTIONS BY AND AGAINST.

As to actions against, for defective highways and bridges, see HIGHWAYS, XIV.

129. Townships are bodies politic and corporate, capable of suing and being sued; but they have no corporate fund out of which a judgment may be satisfied, and there is no statute providing a mode for obtaining satisfaction of a judgment directly against a township. (See H. S. § 8218, as amended by act 312 of 1887, providing for a collection of judgment by assessing tax): *Niles Highway Commissioners v. Martin*, 4 M. 557.

130. A township can sue in justice's court: *Hart v. Port Huron*, 46 M. 428.

131. Townships cannot sue for injuries to highways and bridges: *Denver v. White River Boom Co.*, 51 M. 472.

132. A township cannot sue for unpaid taxes except where taxes on personalty are returned unpaid for want of property whereon to levy: *Staley v. Columbus*, 36 M. 38.

133. A township created out of territory that, as an unorganized township, had been attached to an organized township, cannot sue the latter for the amount of local taxes not expended, as directed by C. L. 1871, § 450 (see H. S. § 456), within its own limits (see COUNTIES, §§ 118, 119): *Roscommon v. Midland*, 39 M. 424.

134. A township cannot be sued at common law by a county for the taxes which the township treasurer should have paid into the county treasury, but has embezzled; *mandamus* to levy tax is the remedy: *Hart v. Oceana*, 44 M. 417; *Oceana v. Hart*, 48 M. 319. See, as to the proper remedy, *supra*, §§ 65, 66.

135. An action against the township is not the proper remedy to compel the payment of a liquidated demand; *mandamus* lies against the town officers in case of their refusal to pay: *Marathon v. Oregon*, 8 M. 372; *Dayton v. Rounds*, 27 M. 32; *Just v. Wise*, 42 M. 573. Otherwise in the federal courts: See COURTS, § 132.

136. *Assumpsit* is not the proper remedy to enable one township to recover from an-

other moneys collected by the latter for taxes and to which the former is entitled: *Comins v. Harrisville*, 45 M. 442.

137. Where the legal obligation of a township to pay bonds issued by it and the good faith of the holder thereof are disputed, it *seems* that the proper remedy against the township is by action; *mandamus* denied: *Loomis v. Rogers*, 58 M. 135.

138. A non-resident whose property has been seized and sold to satisfy a tax for which he claims he was not liable may sue the township in *assumpsit* to recover the amount received by its treasurer on such sale: *Byles v. Golden*, 52 M. 612.

139. *Assumpsit* lies to recover back moneys paid for taxes illegally assessed and collected where such taxes have gone into the township treasury; and to fix the town's liability no further proof is required than that its treasurer received the money in his official capacity: *Daniels v. Watertown*, 55 M. 376.

140. H. S. § 737 provides that all process against a township shall be served upon its supervisor. *Held*, that such service cannot be made outside of the county to which his township belongs, and therefore that a township cannot be sued except in the county where it lies: *Pack v. Greenbush*, 63 M. 122.

141. The equitable proceeding under H. S. § 795 for an accounting between townships as to personal property and debts is barred in six years, unless special equities prevent: *Sheridan v. Frost*, 62 M. 136.

That a township cannot be sued to recover back drain tax unlawfully levied, see DRAINS, § 97.

Township not proper defendant to bill for relief against drain tax, see DRAINS, § 107.

142. A township is a necessary party to a bill to have a tax declared void when a decree for complainant would result in having the taxes re-assessed or spread upon the lands of the township: *Adams v. Auditor-General*, 48 M. 453.

TRADE-MARKS.

1. A trade-mark at common law is any peculiar device or symbol whereby any dealer may distinguish his goods from another's; he secures the sole right to use it by prior adoption, by the publication of it as his own and by exclusive sale. But it cannot be a mere designation of a quality, the name of a place, or a description of the article in ordinary language: *Smith v. Walker*, 57 M. 456.

2. Whether the label "Smith's Grain

Grader and Seed Separator" can be treated as a trade-mark, *quere: Ibid.*

3. Redress for the infringement of a trade-mark must be had at common law if the trade-mark is unregistered, and if no application has been made for its registration: *Ibid.*

4. A partnership trade-mark may be an important element in the good-will of the business, and is an asset of the firm which can be sold or disposed of on its dissolution. But if not disposed of, each partner has a right to use it if he continues in the business, unless it has been otherwise agreed: *Ibid.*

5. Injunction lies to restrain partners who have sold out their interest in the good-will of a business from carrying on a rival establishment under a name so similar to that of the first as to mislead and draw off business; and the writ lies against all concerned in the new establishment. But it is hardly necessary to interfere with the delivery of mail to the latter beyond requiring them to turn over at once to the original establishment so much as may have been intended for it: *Myers v. Kalamazoo Buggy Co.*, 54 M. 215.

6. The vendees of a business built up under a trade-name may have the vendor enjoined from using such name in violation of his agreement; so may those who join with the vendor in such use be enjoined: *Grow v. Seligman*, 47 M. 607.

TREATIES.

1. Where a treaty has been made and ratified by the proper federal authority it becomes the law of the land; and courts have not the power to question the powers or rights recognized by it in the nation or tribe with whom it was made: *Maiden v. Ingersoll*, 6 M. 373.

2. A treaty is a law of the land as much as an act of congress is: *Crane v. Reeder*, 25 M. 303.

3. A treaty is a contract with the nation; and when the executive department has to carry it out, the department is not so bound by the conduct of its agents as to preclude it from repudiating their frauds and refusing to follow their false decisions: *Raymond v. Shawboose*, 34 M. 142.

4. In construing a treaty courts should be guided by the obvious intention of the parties as expressed by the instrument, and should give effect to such intention: *Stockton v. Williams*, 1 D. 546.

5. Where a decision upon a question arising under a treaty has for sixteen years been rec-

ognized as the law governing titles under such treaty, it should be recognized as a rule of property which the courts are not at liberty to disturb: *Campau v. Dewey*, 9 M. 381.

6. The stipulations contained in the treaty of London (1794) known as Jay's Treaty, for the protection of private rights of property, imposed no new obligation upon the government of the United States, but were only in affirmance of the law of nations: *May v. Specht*, 1 M. 187.

7. Article 9 of said treaty with Great Britain construed with respect to the right of aliens to hold lands: *Crane v. Reeder*, 21 M. 63.

8. The treaty between the United States and Great Britain of 1842, which concedes to the vessels, etc., of both nations a right of passage through the lakes and their connecting waters divided and appropriated by the treaty, does not deprive either of that complete and exclusive jurisdiction over that part of the waters on its side the line which any nation may exercise upon land within its limits: *People v. Tyler*, 7 M. 161.

9. By a treaty made in 1807 between the United States and the Chippewa, Ottawa, Pottawattomie and Wyandotte tribes of Indians certain lands near Detroit, among others, were reserved to these tribes. The treaty did not show on its face what tribe was in the occupancy of these lands. By another treaty with the Pottawattomies in 1827 these lands therein stated to have been before "reserved to the use of the said tribe" were ceded to the United States. Held that, this treaty having recognized the right to their reserve to have been in the Pottawattomies, the courts are bound so to regard it, and must consider the treaty of 1827 as extinguishing the reserve: *Maiden v. Ingersoll*, 6 M. 373.

10. The Indian treaty of Saginaw of Sept. 24, 1819, vested the legal title in the reserves named therein as soon as the lands were located: *Stockton v. Williams*, W. 120.

11. Said treaty conferred a title in fee-simple upon the reserves therein named, which title attached to specific lands as soon as these were located: *Stockton v. Williams*, W. 120; *Dewey v. Campau*, 4 M. 565.

12. Where a treaty makes no provision for deciding questions of individual identity they must be decided by the courts: *Stockton v. Williams*, W. 120, 1 D. 546.

13. The court cannot, from a construction of the treaty of Saginaw of Sept. 24, 1819, interpret the words "Indians by descent," as used therein, to mean persons of mixed white and Indian blood only, and not full-blooded Indians: *Campau v. Dewey*, 9 M. 381.

14. Nor can the court say from the language of the treaty, the policy of the government as indicated by the Indian treaties, public records and dispatches, and the habits and modes of life of the Chippewa nation, that a presumption arises that all the reservees in said treaty were persons of mixed white and Indian blood: *Ibid*.

15. The question of the identity of a reservee named in said treaty is entirely a question of fact for the jury: *Ibid*.

Evidence to designate reservee, see EVIDENCE, §§ 155, 200, 258.

16. A treaty with Indian tribes, after reciting that they felt a strong consideration for aid rendered by certain of their half-breeds, and that wishing to testify their gratitude they had assigned certain locations of land to such individuals, and had united in a strong appeal for the allowance of the same in the treaty, but that no such reservations could be permitted in carrying out the instructions of the president, it was agreed that, in addition to the general fund set apart for half-breeds in another article, the sum of \$48,148 should be paid for the relinquishment of this class of claims, to be divided in the following manner: "To John A. Drew, for a tract of one section and three-quarters to his Indian family at Cheboygan Rapids, at \$4 an acre," etc. Held, that the money was given to Drew absolutely and not in trust for his Indian family: *Cook v. Biddle*, 3 M. 269.

17. Under the practical interpretation put on the Indian treaty of Oct. 13, 1864, by the government, the selection of lands and the competency of the grantees both became operative together when fixed by the proper official authority, and both were before that ambulatory: *Raymond v. Shauaboese*, 34 M. 142.

18. And no disposition by an Indian of land in expectancy under said treaty is valid: *Ibid*.

TRESPASS.

I. TRESPASS TO REALTY.

- (a) *What is a trespass.*
- (b) *When trespass lies.*
- (c) *Who can maintain trespass.*
- (d) *Who are liable.*
- (e) *Pleading and evidence.*
- (f) *Court and jury; instructions.*
- (g) *Judgment; costs.*

II. TRESPASS TO PERSON OR PERSONALTY.

- (a) *What constitutes; when lies; who may bring; who liable.*
- (b) *Pleading and evidence.*
- (c) *Instructions; damages; judgment.*

III. TRESPASSERS AB INITIO; RELATION.

IV. JOINT TRESPASSERS; RATIFICATION.

V. TRESPASS FOR INJURIES DONE UNDER PROCESS.

See TRESPASS ON THE CASE.

As to trespasses by animals, see ANIMALS.

As to master's liability for servant's trespasses, see MASTER AND SERVANT, §§ 32-37.

As to when trespass may be waived and suit brought in *assumpsit*, see ASSUMPSIT, II.

As to assignment of cause of action for trespass, see ASSIGNMENT §§ 21-25, 32; ERROR, § 644.

As to venue of actions for trespass, see ACTIONS, IV.

Affidavit for arrest for trespass, see JUSTICES OF THE PEACE, §§ 101-108.

That *capias* may be in trespass though affidavit is in case, see CAPIAS AD RESP., § 12.

I. TRESPASS TO REALTY.

Trespasses on public lands, see PUBLIC LANDS, §§ 159-191.

As to the damages in actions for trespass to lands, see DAMAGES, §§ 48, 49, 95-98, 104, 119, 144, 145, 171, 172, 181, 244, 245, 248, 262-286, 323, 376, 384-386, 389.

As to treble damages, see DAMAGES, V.

That trespass *qu. cl. fr.* for allowing logs to accumulate upon plaintiff's premises in consequence of closing up of stream is cognizable by a justice, see JUSTICES OF THE PEACE, § 59.

(a) *What is a trespass.*

1. To disturb peaceable possession by force is a trespass irrespective of ownership; and an action therefor involves no question of title: *Newcombe v. Irwin*, 55 M. 620.

2. The projection of eaves over the boundary of a lot does not constitute trespass *qu. cl. fr.*: *Bureau v. Marshall*, 55 M. 234.

3. Breaking through the partition wall of an adjoining mine is not necessarily a trespass if not incident to encroachment upon the latter premises: *National Copper Co. v. Minn. Mining Co.*, 57 M. 83.

4. Defendant cut off a portion of plaintiff's fence between their premises, making the fence one foot lower. *Held*, a trespass entitling plaintiff not only to nominal damages but to the full value of the property destroyed, even though the cutting-down process improved the fence: *Fisher v. Dowling*, 66 M. 870.

5. In an action between two adjoining owners for trespass upon land the only evidence

as to the true location of the boundary was occupancy on plaintiff's part and an *ex parte* survey on defendant's; and it was shown that defendant had moved the fence even further than his survey called for. *Held*, that he was guilty of trespass: *Bird v. Stark*, 66 M. 654.

6. Defendants, under an oral license from plaintiff to build sheds on land which they had contracted to buy of him (their contract giving no right of possession), placed the sills for the sheds, but were then notified that the license was terminated. However, they went on and built the sheds. After about fifteen months plaintiff resumed possession, moving his fence back so as to include the sheds. Then defendants entered, tore down the fence and removed the sheds. *Held*, a trespass, whether defendants were or were not liable for the value of the sheds: *Druse v. Wheeler*, 22 M. 439.

7. The lapse of time between the revocation and the trespass (April, 1868, to July 6, 1869) exceeded any reasonable time for the removal, and the jury should have been so told: *Druse v. Wheeler*, 23 M. 439, 26 M. 189.

8. And it seems that, by erecting the sheds upon the sills after the license was terminated, defendants lost all right to remove the sills, which thus, by their own wrongful act, had become a part of the sheds, and that the sheds (entire) became plaintiff's property: *Druse v. Wheeler*, 26 M. 189.

As to when trespasser acquires property rights, see ACCESSION.

9. A purchaser of lots according to a plat which designates a certain street commits a trespass if, without resorting to legal methods to open the same, he tears down fences and drives over the land: *Graham v. Poor*, 50 M. 153.

10. The removal by village authorities of a sidewalk which had been laid by the village at its own expense in front of plaintiff's lot, and there used for two years and kept in repair by plaintiff, is an actionable trespass: *Rogers v. Randall*, 29 M. 41.

11. Persons constructing a drain are guilty of a trespass if they throw dirt on the plaintiff's land outside the limits of the land taken for the purposes of the drain: *Clark v. Wiles*, 54 M. 323.

12. By public usage there is no trespass in taking fish from a small lake nearly surrounded by another's land, unless the landowner has given notice that it will not be allowed: *Marsh v. Colby*, 39 M. 626.

When removal of bridge not a trespass, see DAMAGES, § 430.

(b) *When trespass lies.*

13. Trespass, not case, is the proper form of action where the injury to plaintiff is direct, not incidental or consequential (but H. S. § 7759 allows case to be brought); and this is so although the injury was done by plaintiff's servants, not by plaintiff in person: *Smith v. Webster*, 23 M. 298.

14. One claiming ownership of land covered by navigable water brought trespass *qu. cl. fr.* against a party who used the premises for fowling purposes. No objection to the form of the action having been raised below, a judgment on verdict for plaintiff was affirmed though relief might have been had in case: *Sterling v. Jackson*, 69 M. 488.

15. H. S. § 7548 makes trespass the proper form of action where suit for the cutting of trees on lands in one county is brought against defendants in whatever other county they may be found, and it applies to non-resident employers: *Smith v. Webster*, 23 M. 298.

16. In trespass the breaking and entry is the gist of the action; expulsion or ouster is a mere aggravation of the trespass. If the original entry be lawful, trespass *qu. cl. fr.* will not lie: *Draper v. Williams*, 2 M. 536.

17. Trespass does not lie to contest, not the defendant's right to the possession of land, but his right to cultivate it in the particular manner he has adopted: *Burnham v. Van Gilder*, 34 M. 246.

18. Where proceedings to lay out a highway are void, and the occupation of the owners of the lands sought to be appropriated is disturbed, trespass lies, although it is not the most suitable remedy: *Names v. Highway Commissioners*, 30 M. 490.

19. When one makes an excavation by his neighbor's land, into which the land, from its own weight and of necessity, must fall and does immediately fall, trespass will lie against him therefor: *Buskirk v. Strickland*, 47 M. 389.

20. The action of trespass given by H. S. § 7957 to the owner of lands for cutting down or injuring trees or timber thereon differs from the ordinary action of trespass *qu. cl. fr.*, and lies in some cases where that action does not: *Achey v. Hull*, 7 M. 423.

21. Said statute was not designed to protect mere possessory rights, but to give the owner of the fee the right to sue, under the form of trespass, for injuries to his inheritance. And it is therefore not a defence to the action that defendant had disseized the plaintiff, though it may prevent treble damages: *Ibid.*

22. The action of trespass with treble dam-

ages allowed by H. S. § 8806 to one who has obtained restitution in forcible-entry proceedings is not the same as the common-law action of trespass for mesne profits: *Hitchcock v. Pratt*, 51 M. 263.

23. And the party is not deprived of this remedy by defendant's voluntary surrender of the premises and dismissal of a writ of error sued out by him on the judgment of restitution: *Ibid.*

24. Previous to Sept. 10, 1881, when the amendment to H. S. § 8295 took effect, summary proceedings would not lie to recover as against heirs or devisees in possession lands sold under executors' deeds; therefore the action of trespass provided by § 8306 will not lie for damages sustained prior to that date; nor can a notice to quit or demand of possession made prior to that date be made a basis of recovery against an heir or devisee: *Newkirk v. Tracey*, 61 M. 174.

(c) *Who can maintain trespass.*

25. One in possession under claim and color of title can maintain an action for cutting timber and removing it from the land: *Hoffman v. Harrington*, 44 M. 183.

26. A *prima facie* title to lands flooded entitles one to sue: *Fox v. Holcomb*, 32 M. 494.

27. Trespass *qu. cl. fr.* can be brought only by one in actual or constructive possession. If no one holds actual possession the owner of the legal title has constructive possession; but there cannot be constructive possession of lands of which third parties are in actual adverse possession: *Ruggles v. Sands*, 40 M. 559.

28. One's rights as owner, unless something is shown excluding him from any right to be on the premises, are enough to sustain his action for trespass: *O'Brien v. Cavanaugh*, 61 M. 368.

29. A party having title to unoccupied lands is constructively in possession, and may maintain trespass against one who, without his license or authority, having no color of title to the lands, and whose acts evince no intention to retain permanent possession, enters upon them and cuts and carries away timber: *Safford v. Basto*, 4 M. 406.

30. The defendants went upon unoccupied lands under a void tax-title and out and carried away the timber. The plaintiff having the title brought trespass. It was held that he was constructively in possession, and that if the defendants entered upon the lands with the intention to cut and remove the timber as soon as they could, and then abandon it, the act did not constitute a disseizin, and they

were liable in this action: *Ibid.* See *Busch v. Nester*, 62 M. 381.

31. Usually the person in possession is the one to bring trespass for an injury that affects merely the present enjoyment of real property. Whether the action lies in behalf of the owner of premises against a third person for demolishing a portion of a building occupied by a tenant, *quere: O'Brien v. Cavanaugh*, 61 M. 368.

32. An owner of land cannot bring trespass against persons who have been in actual, entire and undisturbed possession for removing a building from it: *Carpenter v. Smith*, 40 M. 639.

33. Plaintiff's possession at the time the alleged trespass was committed cannot be affected by any claim made by the grantee in a deed executed after the trespass: *Gordon v. Cook*, 47 M. 248.

34. A riparian proprietor may bring trespass against one who enters and cuts ice: *Clute v. Fisher*, 65 M. 48.

35. A lessee of land described as bounded on a river has a legal interest in the land covered with water which will support an action of trespass for booming logs upon the water, thus hindering him from taking ice: *Lorman v. Benson*, 8 M. 18.

36. A contract purchaser of lands who has acquired no property rights cannot, at least before fulfilling all the conditions of the contract and becoming absolutely entitled to a conveyance, maintain an action for injuries to the freehold; such right of action belongs to the legal owner of the land: *Moyer v. Scott*, 30 M. 845.

37. Where a contract purchaser of lands has brought action for a trespass thereon, a deed subsequently executed by the vendor upon an anticipated payment cannot operate by way of relation to the date of the contract to transfer to such purchaser, for the purpose of saving his suit, the right of action which belonged to the vendor when the suit was brought: *Ibid.*

38. A vendee in a land contract who has neither actual nor constructive possession cannot bring trespass against his vendor's grantee for cutting timber: *Pfister v. Bird*, 48 M. 14.

39. A vendee's possession under a paid-up land contract entitling him to a deed is sufficient to enable him to recover in trespass for the loss of pasturage and hay resulting from the negligent flowing of the land by a booming company: *Witheral v. Muskegon Booming Co.*, 68 M. 48.

40. One who at the time of an alleged trespass had neither the legal title to nor the

actual possession of the premises cannot maintain an action for such trespass, basing his right upon the relation back of a decree for specific performance against defendant's lessor: *Goetchius v. Sanborn*, 46 M. 330.

41. After standing timber has been sold, a subsequent grantee by warranty deed of the land with notice of such sale cannot maintain trespass against the vendee of the timber for cutting and removing it: *Russell v. Myers*, 32 M. 522.

42. A widow, while in possession of an estate under a claim of homestead, was intruded upon and dispossessed by one of her husband's heirs, who asserted rights under a contract which he claimed, but failed to prove, entitled him to the possession. *Held*, that the widow might maintain a suit for trespass: *Patterson v. Patterson*, 49 M. 176.

43. A grantor cannot maintain trespass against his grantee for destroying the wheat on the land, when the strict construction of the deed is merely to except the wheat from the covenants of warranty, but not to reserve it: *Knapp v. Woolverton*, 47 M. 292.

44. A party who has an exclusive right may bring trespass for an injury during its continuance though he has not an absolute interest or entire property in the soil: *Gilbert v. Kennedy*, 23 M. 5.

45. The interests affected by a trespass may be so divided that the landlord may sue for one injury and the tenant for another at the same time: *Ibid.*

46. In an action of trespass brought by tenants in common in relation to their land, all, as a general rule, must join as plaintiffs; but a joint action will not lie against a railroad company where one of two tenants in common has granted to the company the right of way as to his interest over the common estate; such grant operates as a release of his damages: *Draper v. Williams*, 2 M. 536.

47. Proof of non-joinder of a plaintiff in trespass for cutting down trees only goes to apportion the damages where there is no plea in abatement: *Achey v. Hull*, 7 M. 423.

(d) Who are liable.

48. Where a party commits a trespass he must be held to contemplate all the damages that legitimately follow from his illegal act. It is immaterial whether, in committing the trespass, he actually contemplated it or other damage to plaintiff: *Allison v. Chandler*, 11 M. 542.

49. Good faith does not excuse a trespasser. He must ascertain his rights and not invade

another's actual or constructive possession: *Isle Royale Mining Co. v. Hertin*, 37 M. 332.

50. Absence of bad faith never excuses a trespass, though the existence of bad faith may sometimes aggravate it. Every one must be sure of his legal right when he invades another's property: *Cubit v. O'Dett*, 51 M. 347.

51. The mere intent of a defendant in trespass is not material if his conduct was not actionable: *Estey v. Smith*, 45 M. 402.

52. One who enters under a tax certificate and cuts timber is a trespasser: *Busch v. Nester*, 62 M. 381.

53. A tenant is liable in trespass *qu. cl. fr.* to his landlord if he destroys trees or other things excepted in his lease: *Gilbert v. Kennedy*, 23 M. 5.

54. A purchaser on foreclosure ousted a tenant after the foreclosure became absolute, but took an attornment and afterward allowed the tenant to attorn to a person who claimed title under a tax lease. Meanwhile the former owner had obtained a decree on a bill to redeem, and the purchaser had released to her. *Held*, that the tenant and the person to whom the second attornment had been made became trespassers: *Steinhauser v. Kuhn*, 50 M. 367.

55. The agents of a railroad company holding land under grant from the state by which it had been taken after provision for compensation had been made are not liable in trespass for entering and erecting fences: *Smith v. McAdam*, 3 M. 506.

56. A highway commissioner was *held* liable in trespass for cutting and carrying away plaintiff's shade-trees standing in the highway in front of his premises, where there had been no order for or notice of removal, and where they did not appear to be obstructions: *Clark v. Dasso*, 34 M. 86.

57. The Detroit board of public works and contractors employed by it are liable in trespass for digging away the front of a man's premises for the purpose of grading the street if such excavation was not authorized by the proper authorities (see *CITIES, ETC.*, §§ 60, 238): *Larned v. Briscoe*, 62 M. 393.

58. A drain contractor who casts earth outside of the limits of the right of way for the drain, upon adjoining land, is liable in trespass to the owner of such land: *Clark v. Wiles*, 54 M. 323. See *Davis v. East Saginaw*, 66 M. 37.

59. The managing agent of a corporation neglected to instruct his workmen as to boundaries, and they trespassed. *Held* that, if he

was liable at all, it was in case for negligence and not in trespass *quare clausum*: *Bath v. Caton*, 37 M. 199.

(e) *Pleading and evidence.*

60. Where a declaration in its commencement called the action "trespass on the case," but laid in each of its four counts as the substantive cause of action the tortious entry by defendant on premises demised by him to plaintiff during the existence of the tenancy, setting forth, however, further circumstances of injury, including the putting out and exposure of certain chattels, it was *held* that the action was one in trespass *qu. cl. fr.*, that the action must fail and no recovery be had for the alleged matters of aggravation, unless the breaking and entry were made out, and that the relation of landlord and tenant was material and to be shown: *United States Manuf. Co. v. Stevens*, 52 M. 330.

61. In a declaration in trespass *qu. cl. fr.*, allegations of trespass to the person and of conversion may be inserted as matters of aggravation: *Waldo v. Waldo*, 52 M. 14.

62. A count charging the entry, under pretext of a license, upon premises not covered by the license, was *held* to be a count in trespass if valid for any purpose, and could not sustain a recovery where it set up no consequential damages: *Ives v. Williams*, 53 M. 636.

63. In an action for treble damages for cutting timber, the objection that the declaration does not contain a sufficient averment of plaintiff's ownership to support a finding in his favor should be raised by demurrer: *Clark v. Field*, 42 M. 342.

Further as to the pleadings where treble damages are involved, see *DAMAGES, V, (b)*.

64. An alleged trespass being laid with a *continuando*, if the plaintiff proves a distinct act of trespass prior to the time alleged in the declaration, he thereby elects to put his right to a recovery on that trespass, and evidence of any further grievances is inadmissible: *Gilbert v. Kennedy*, 23 M. 5.

65. Where a declaration in trespass is not for a continuing trespass begun at one time and continued up to another, but for a series of distinct acts of trespass, the first being laid on or about a specified day and the others at divers other times, it is competent for the court to put plaintiff to his election by confining him to proof of either a single act prior to the date specified, or of so many as the truth allows between that date and the com-

mencement of suit: *McDiarmid v. Caruthers*, 84 M. 49.

66. Where, under a declaration in trespass charging a series of distinct acts of which the first is laid on or about a specific day, the court at the outset has ruled that plaintiff must elect between a single act prior to the date specified and so many as his proofs would warrant afterwards, and he has accordingly elected the latter and offered no proof of the former, and it in no wise appears that he was in a situation to offer any, the ruling, if abstractly incorrect, is not necessarily prejudicial: *Ibid*.

67. Where plaintiff declares for trespass on lands in a certain township, without giving a particular description of the lands, defendant, if he pleads title in himself, will make out a defence by proof of ownership in himself of any parcel of land in the township named: *McFarlane v. Ray*, 14 M. 465.

68. And plaintiff must amend his declaration to obtain the benefit of a new assignment which he could have had by replication when the system of special pleading was in force: *Ibid*.

69. Under a declaration in trespass alleging that defendant, with cattle, to wit, horses, hogs and oxen, trod down, trampled upon and destroyed the grass, corn, etc., of plaintiff, and other injuries to him then and there did, to his damage, etc., it is not error to admit evidence that part of the damage was done by defendant's cows, as the gist of the action is the forcible entry, and no precise certainty is requisite; nor is it error to admit evidence, under the allegation of other injuries, that corn cut from the stalks and apples fallen to the ground were destroyed: *East v. Cain*, 49 M. 478.

70. An overseer of highways was sued for trespass upon land held by plaintiff subject to the easement of a public highway. *Held*, that the declaration should in some way apprise defendant that the trespass complained of was in a public highway, instead of making a general allegation of the destruction of grass and corn upon a certain quarter of a quarter-section, leading naturally to the conclusion that it was upon the enclosed and cultivated land of the plaintiff: *Wolf v. Holton*, 61 M. 550.

71. One who brings trespass for removing a building from premises mortgaged to him, which removal he counts upon as impairing the security for the purposes of a deficiency on foreclosure, cannot recover unless he shows that the deficiency arose upon a valid foreclosure and sale: *Taylor v. McConnell*, 53 M. 587.

72. Under the plea of the general issue in trespass a freehold or mere possessory right may be given in evidence: *Rawson v. Finlay*, 27 M. 268.

73. Where the declaration in trespass *qu. cl. fr.* alleged that defendant broke and entered plaintiff's close, describing the premises, defendant, under the general issue, was entitled to show an adverse title by tax-deeds issued to himself: *Solomon v. Groesbeck*, 65 M. 540.

74. Where, in trespass *qu. cl. fr.*, brought in a justice's court, defendant pleads the general issue without putting the title in issue, defendant can only contest the fact of trespass; but this does not preclude him from contesting the title thereafter in ejectment: *Keyser v. Sutherland*, 59 M. 455.

75. Trespass brought in justice's court, where defendant pleaded the general issue without notice, was certified to the circuit because it appeared from plaintiff's evidence that title to land was involved. *Held*, that the defendant was not precluded from showing adverse possession or title in himself: *Rawson v. Finlay*, 27 M. 268.

76. In an action in justice's court for cutting off a portion of plaintiff's fence, the declaration averred ownership in fee of the land described, and the general issue was pleaded. *Held*, that title to land was not in issue, and that proof by a surveyor or any one else going to show anything not bearing on possession was improper: *Fisher v. Dowling*, 66 M. 370.

77. Where the declaration avers title to be in plaintiff and defendant claims title under the notice filed with his plea, the title is put in issue: *Walters v. Tefft*, 57 M. 390.

78. In trespass the defence of license cannot be made unless under a special notice: *Vanderkarr v. Thompson*, 19 M. 82; *Senecal v. Labadie*, 42 M. 126.

79. The notice under the general issue is, under our practice, the only admissible form of pleading title and license in trespass *qu. cl. fr.*: *Druse v. Wheeler*, 22 M. 439; *Walters v. Tefft*, 57 M. 390.

80. The special notice of defence may by leave of court be amended so as to aver license: *Hopkins v. Briggs*, 41 M. 175.

81. In an action for trespass to lands and the cutting of timber in which plaintiff claims treble damages defendant may show under the general issue that the trespass was involuntary and was made under a claim of right: *Osburn v. Lovell*, 36 M. 246.

82. Evidence to show a license from the agent of a land-owner to cut timber on the land is not admissible as a defence unless the

agent's authority is shown; but it may be received to show that the defendant acted in good faith in cutting it: *Clark v. Field*, 42 M. 842.

83. In an action for trespass committed by an overseer of highways upon land held subject to the easement of a highway, defendant may show that what he did was lawfully performed under and by virtue of the possession of the public, and in legitimate furtherance of the rights and needs of travel in a public highway: *Wolf v. Holton*, 61 M. 550.

84. In an action for trespass for entering lands, etc., tax-deeds which the evidence shows are void may be treated as color of title; and if the defendant took possession under them, they are admissible in evidence as tending to show what and how much land he claimed: *Hoffman v. Harrington*, 28 M. 90.

85. In an action of trespass to lands, where the plaintiff is not in actual possession, but bases his right upon the legal title and the constructive possession claimed to be drawn therefrom, evidence of tax-titles held by third persons is admissible; such titles being *prima facie* paramount, and therefore, unless overcome, defeating plaintiff's right of action: *Tolles v. Duncombe*, 84 M. 101.

86. In trespass *qu. cl. fr.* it is proper to show the malicious arrest of the plaintiff to keep him out of the way during the trespass: *Druse v. Wheeler*, 22 M. 439.

87. In an action for trespass evidence of a previous conversation between plaintiff and a third person about splitting rails to fence the land was held admissible as tending to show acts of ownership: *Gordon v. Cook*, 47 M. 248.

88. A defendant in trespass held properly asked whether plaintiff had not arrested him for going on the premises at the time of the trespass: *Ibid.*

89. In an action against joint defendants for a trespass committed in May there was no error in excluding a question as to whether one of the defendants was occupying the place at the time witness cut some grass there, the grass being cut in the following fall: *Ibid.*

90. Defendant in trespass for cutting and removing timber may be cross-examined as to whether he had ever made an offer to plaintiff for the timber on the particular tract from which it was taken, as the answer might bear on the value of the timber before severance: *Skeels v. Starrett*, 57 M. 350.

91. And where the declaration alleges injury to the timber remaining on the land it is proper to show how its value would be affected by the removal: *Ibid.*

92. One who is shown to have made a scale of logs can use it to aid his memory in testifying, in an action of trespass for cutting and removing timber, as to the quantity taken away: *Ibid.*

(f) Court and jury; instructions.

93. Where a plaintiff makes out a *prima facie* case of entry and ouster and there is evidence that the defendant had previously parted with his interest in the premises, there is enough as between the parties to go to the jury: *Tracy v. Butters*, 40 M. 406.

94. Where plaintiff, as holder of the legal title, has the right of possession, where the acts constituting the alleged trespass are not disputed, and where there is no testimony tending to show that the entry was with the consent of plaintiff or his agent, the case should go to the jury on the question of damages: *Solomon v. Groesbeck*, 65 M. 540.

95. Where joint defendants were sued in trespass and one of them on direct examination testified that he was not present when the trespass was committed, but on cross-examination testified that he was, and there was no other testimony that he was not there, it was held that there was no contested question as to his presence for the jury: *Gordon v. Cook*, 47 M. 248.

96. Defendant in a suit for trespass upon land belonging to an estate in process of settlement justified under an agreement which he claimed to have made with decedent's widow that he might use the land for a year or until the estate should be settled. There was evidence tending to show that it might be settled within a year. Held, that a charge that plaintiff could not recover if the jury should find that defendant was to have the use of the land while the estate was being administered was erroneous; the question should have been submitted whether the arrangement was to last until, or end with, the settlement of the estate, irrespective of the time it should take to settle it: *Patterson v. Patterson*, 54 M. 844.

97. Plaintiff in trespass for cutting and removing timber claimed to have constructive possession under certain probate proceedings; and defendant asked a charge that to entitle him to recover he must show title. Held, that a charge that "plaintiff's title or color of title and possession and occupation were sufficient to entitle him to maintain the action" did not take from the jury the question whether the title was valid or not: *Hoffman v. Harrington*, 44 M. 188.

98. The refusal to charge that the projection of eaves of the boundary of a lot does not constitute a trespass *qu. cl. fr.* is not material error if only nominal damages are awarded as for such trespass, while a verdict is rendered at the same time for a substantial encroachment: *Bureau v. Marshall*, 55 M. 234.

99. In an action of trespass for damages for several alleged trespasses by defendant's cattle, the trial court charged the jury erroneously as to the duty to keep up fences, and there was a general verdict for plaintiff, but for less than he claimed. *Held*, on error brought by plaintiff, that it could not be said on such a verdict that the jury must have found the fence sufficient; for they might have found the fence sufficient at some of the times when trespasses were complained of and insufficient at others: *Aylesworth v. Herrington*, 17 M. 417.

(g) *Judgment; costs.*

As to the verdict and judgment in cases where treble damages are sought, see DAMAGES, §§ 434-441.

100. A judgment in trespass *qu. cl. fr.* does not bar a subsequent ejectment suit for the same premises, even though the parties in both suits are the same: *Keyser v. Sutherland*, 59 M. 455.

101. In this state a judgment in trespass is not evidence of the title to land: *Busch v. Nester*, 62 M. 381.

102. In trespass for tearing down a line fence defendant pleaded title and judgment was rendered in his favor. *Held*, that such judgment is not conclusive evidence that defendant had title to the fence or to the line which it had enclosed, and settled nothing but defendant's non-liability to plaintiff for having torn it down: *Fahey v. Crotty*, 68 M. 383.

That where separate judgments are obtained against joint trespassers execution on one bars action on another, see JUDGMENTS, § 247.

103. H. S. § 8964 gives costs to a plaintiff in trespass whatever the amount of his recovery, where the title to land is put in issue by the pleadings or comes in question on the trial: *Druse v. Wheeler*, 22 M. 439.

104. And it gives costs in cases where the title to land is put in issue by the pleadings as well as where it actually comes in question upon the trial: *Walters v. Tefft*, 57 M. 390.

105. A general verdict under a declaration in trespass *qu. cl. fr.* which contains a count for removing personalty after unlawful entry warrants a judgment for costs if title was put in issue by the pleadings: *Ibid*.

106. A declaration in justice's court for in-

jury to certain described land alleged title to be in plaintiff, and defendant, filing bond and plea with notice of title in himself, had the cause certified to the circuit court, where plaintiff failed because the conveyance under which he claimed showed a life title in his grantors, his other evidence showing that he was merely working the land on shares for one of said grantors who was in possession. *Held*, that defendant was entitled to costs; it made no difference that his own title was not necessarily in the case or that it was not interposed on the trial: *Labeau v. Labeau*, 61 M. 81.

As to when title to land comes in question, see *supra*, §§ 1, 76, 77; JUSTICES OF THE PEACE, §§ 50-57.

II. TRESPASS TO PERSON OR PERSONALTY.

See ASSAULT AND BATTERY; FALSE IMPRISONMENT; TROVER.

(a) *What constitutes; when lies; who may bring; who liable.*

107. The clandestine entry of a claimant upon premises of which another has been given possession by legal process makes him a tortious intruder whom the lawful possessor may expel by force, if need be, and if the intruder is accidentally injured in the process of expulsion, his own contributory negligence should be considered in fixing the responsibility therefor: *Taylor v. Adams*, 58 M. 187.

108. The license impliedly given to enter another's place of business is revoked the moment the person so entering interferes unlawfully with the proprietor's rights or property: *Webber v. Barry*, 66 M. 127.

109. The license to enter another's private office implied by the opening of such office to the public for the transaction of business with the owner is revoked at once as to a person who is ordered to leave; and one who has been forbidden to enter is a trespasser when he goes in: *Breitenbach v. Trowbridge*, 64 M. 393.

110. The common-law action of trespass lies for injuries done to plaintiff's horse and carriage by defendant's not turning to the right on a highway as required by H. S. § 1456; and it seems that the limitation of one year fixed by H. S. § 1457 would apply to this as well as to the public prosecution or the statutory action there provided for: *Evers v. Sager*, 28 M. 32.

111. One who owns a growing crop, but not the land whereon it is growing, may re-

cover for it in trespass as constructively severed, although a portion of it was still uncut when defendant's forcible interference occurred: *McDaniels v. Walker*, 44 M. 88.

112. Trespass is the proper action to be brought for an injury to plaintiff's cow, caused by defendant setting his dog upon her: *Wood v. La Rue*, 9 M. 158.

See ANIMALS, §§ 10-15, 83.

113. Trespass does not lie for eating a portion of some meat furnished by a dealer but not paid for, and returned so far as unimpaired on account of a disagreement as to the price: *Finch v. Brian*, 44 M. 517.

114. Whether trespass can be brought to recover the damages which one has sustained by the unlawful detention of his property after he has recovered the property in replevin, *quere*: *Delevan v. Bates*, 1 M. 97.

115. One tenant in common cannot bring trespass against his co-tenant for a partial injury to the common property: *Wells v. Hollenbeck*, 37 M. 504.

116. But such a tenant can bring trespass against his co-tenant for a wrongful conversion of the property held in common: *McClure v. Thorpe*, 68 M. 33.

117. Where a mortgagee of chattels waives his priority and with the second mortgagee takes possession on default, they may join in trespass for an unlawful interference with the goods: *Densmore v. Matthews*, 58 M. 616.

As to trespass brought by copartners, see PARTIES, §§ 111, 114, 116.

118. One who after lawfully entering on premises carefully removes property there situated, and so leaves it that the owner, by exercising reasonable diligence, can take it uninjured, is not liable for injuries sustained to it by the owner's unreasonable delay in taking it: *United States Manuf. Co. v. Stevens*, 52 M. 330.

119. C. hired a steam saw and agreed to furnish fuel. H. had some wood on C.'s premises, and part of it being taken for fuel he sued C. in trespass. *Held* proper to charge that C. would be liable if he furnished it to the workmen, or if he made no objection when he saw it taken and used: *Coon v. Houghton*, 47 M. 240.

(b) Pleading and evidence.

120. Where trespass for cutting and carrying away wheat is brought by an assignee of the party injured thereby, a plea of the general issue puts every part of the declaration in issue and denies not only the taking, but the plaintiff's ownership at the time of the alleged trespass: *Estey v. Smith*, 45 M. 402.

121. In trespass for damages for the detention of property evidence is admissible under the general issue, in mitigation of damages, of a recovery of such property in replevin by the plaintiff, and of a waiver or satisfaction of the damages to which the plaintiff therein was entitled: *Delevan v. Bates*, 1 M. 97.

122. In trespass for a personal injury all the circumstances of the transaction may be shown under the general issue, to have such effect as they deserve in determining the verdict by mitigation or otherwise: *Sutherland v. Ingalls*, 68 M. 620.

123. In trespass *de bonis* the defence that the goods were taken under attachment against a third person alleged to be the owner is not admissible under the general issue without notice: *Rosenbury v. Angell*, 6 M. 508.

124. The relation of landlord and tenant is material and must be shown in an action of trespass brought by the tenant for the removal of his goods by the landlord if the plaintiff counts upon the relation as still subsisting and a constituent fact: *United States Manuf. Co. v. Stevens*, 52 M. 330.

125. In trespass for the improper seizure of property belonging to an estate, but at the time in the peaceable possession of plaintiff, a question as to whether plaintiff had not converted property belonging to the estate after the owner's death is not material: *Waldo v. Waldo*, 52 M. 94.

(c) Instructions; damages; judgment.

126. An instruction leaving the jury to determine whether a joint defendant had "approved or defended" a trespass, when there is no evidence to that effect, is erroneous: *Pigott v. Lilly*, 55 M. 150.

127. The ordinary rule that the damage in trespass *de bonis asportatis* is the value with interest was applied where the sheriff had taken the property under a void execution issued in replevin proceedings to which plaintiff in trespass was not a party or privy: *Rathbone v. Ranney*, 14 M. 382.

128. Where a declaration in trespass for taking and detaining a scow expressly avers a detention for a considerable period, damages for such detention are within it: *Hart v. Blake*, 81 M. 278.

Further as to the measure of damages in trespass for injuries to personal property, see DAMAGES, §§ 120, 175-177, 293-296, 322, 329.

129. A judgment for plaintiff in trespass *de bonis*, and the satisfaction thereof, vest the

title to the goods in defendant: *Bacon v. Kimmell*, 14 M. 201.

130. A judgment for trespass in seizing property to pay an illegal tax is not affected by a statute legalizing the tax-roll: *Moser v. White*, 29 M. 59.

III. TRESPASSER AB INITIO; RELATION.

131. Defendant led a gang of men upon plaintiff's premises to induce plaintiff's workmen to join in a strike. *Held*, that defendant was a trespasser from the time he entered plaintiff's premises, and was responsible for acts of violence committed by his followers at plaintiff's mill, though he told them not to commit any violence, halted them 200 feet from the mill, and did what he could to prevent further violence after they had disobeyed him: *Webber v. Barry*, 66 M. 127.

132. A plaintiff in attachment who instructs an officer to make a levy is not rendered a trespasser *ab initio* by the officer's failure to perform his duty properly: *Michels v. Stork*, 44 M. 2.

133. A tax-collector who has levied on property is not necessarily a trespasser *ab initio* in keeping it a little longer than is necessary in giving notice and making sale: *Bird v. Perkins*, 33 M. 28.

134. An officer's threshing wheat that he has levied upon in the mow, though a technical trespass, does not oblige the jury to award damages as if his levy was unwarranted: *Stilson v. Gibbs*, 40 M. 42.

135. Subsequent acts or neglects rendering one a trespasser *ab initio* and depriving him of the protection to which he was at first entitled must appear to have been done before suit was instituted: *Norton v. Rockey*, 46 M. 460.

136. The doctrine of relation is intended to promote justice and prevent wrong, not to make persons trespassers for acts that were legal when done: *Flint & P. M. R. Co. v. Gordon*, 41 M. 420; *Goetchius v. Sanborn*, 46 M. 380. See *Whipple v. Farrar*, 3 M. 486; *Blackwood v. Brown*, 29 M. 483; *Heffron v. Flanigan*, 37 M. 274; *Hemmingway v. Drew*, 47 M. 554.

137. One cannot be made a trespasser by relation, especially if the act supposed to make him so is that of a person who is neither his agent nor under his control: *Ward v. Carp River Iron Co.*, 50 M. 522.

138. The relation back of the title of a defendant in trespass *de bonis asportatis* arising from his satisfying the judgment against him cannot affect third persons so as to make them trespassers in respect to acts done by them

after the suit was commenced and before the judgment: *Bacon v. Kimmell*, 14 M. 201.

139. A tax-deed cannot by relation make parties trespassers by reason of acts done upon the lands before it was given: *Hess v. Griggs*, 43 M. 397.

140. A decree for specific performance cannot relate back so as to make him a trespasser who was in possession under the holder of the legal title: *Goetchius v. Sanborn*, 46 M. 380.

IV. JOINT TRESPASSERS; RATIFICATION OF TRESPASS.

Separate judgments, election, see JUDGMENTS, § 247.

Discontinuance against one trespasser allowed, see ACTIONS, § 148.

141. One who, in attempting to prevent a trespass, unintentionally contributes something that causes damage cannot be held jointly liable for the trespass with the party intentionally committing it: *Pigott v. Lilly*, 55 M. 150.

142. Where mortgaged property is wrongfully seized by the mortgagees and an officer acting in their behalf, all who take part in the trespass are jointly liable for the value of the plaintiff's interest: *Keables v. Christie*, 47 M. 594.

143. Where an overseer of highways is liable for a lawless act — as in cutting drains that must flood private lands — all his assistants are liable with him for the consequent injury: *Cubit v. O'Dett*, 51 M. 847.

144. A landlord placed a writ of possession in an officer's hands for service, who, meeting with opposition from the tenant's wife, handcuffed her and kept her in that condition while he executed the writ. No violence on the landlord's part was alleged or proved. *Held*, that the latter could not be held as a joint wrong-doer with the officer: *Sutherland v. Ingalls*, 63 M. 620.

145. Persons contracting to purchase timber which is to become theirs as soon as marked are not thereby made joint wrong-doers with their vendor who is not their agent, if without their knowledge or consent, or subsequent ratification, he cuts the timber from another's land: *Nield v. Burton*, 49 M. 53.

That co-trespasser cannot become assignee and sue his fellows, see ASSIGNMENT, § 82.

146. One cannot be liable as for the ratification of a tort that was not committed in his interest; so *held* where suit was brought against the general agent of a sewing-machine company for a forcible trespass committed by employees while removing a machine by his

direction and in compliance with the orders of the company from the premises of one who held it under a sewing-machine lease which had been forfeited: *Smith v. Lozo*, 42 M. 6.

147. Ratification by a father of a trespass committed by his minor son in taking up an estray is equivalent to a prior command so far as liability is concerned, but it establishes no ground on which he can found title to the property: *Newsom v. Hart*, 14 M. 233.

V. TRESPASS FOR INJURIES DONE UNDER PROCESS.

148. Where attorneys procured an order for a *capias* from a court having authority to issue process against the person of the defendant, and under which he was arrested, and they were sued in trespass therefor, it was *held* that, though the order for *capias* might be erroneous, it was not void, and the attorneys were protected by it: *Ward v. Cozzens*, 3 M. 252.

149. Where parties act within the scope of an order of a court of superior jurisdiction, or of an inferior court in a case where such court has jurisdiction, they are protected by the same immunities that are extended to the members of the respective courts: *Ibid*.

150. Trespass will not lie for an act done under a process valid on its face regularly issued from a court of competent jurisdiction: *Ortman v. Greenman*, 4 M. 291.

151. Where the plaintiff in attachment and his attorney, though neither was present or interfered personally, still directed the service of the writ, and after service refused to assent to the release of the property attached, which belonged to another than the defendant, they were *held* liable to an action of trespass in favor of the owner. Had the attorney merely communicated to the officer the plaintiff's instructions, the case as to him might have been different: *Cook v. Hopper*, 28 M. 511.

152. A client is responsible for his attorney's conduct in procuring the issue of an execution unauthorized by law: *Foster v. Wiley*, 27 M. 244.

153. No liability as for trespass can attach to one for merely employing an officer to execute lawful process; he has a right to suppose that the officer will not abuse his functions, and if he has lawfully employed him he is not liable if he does. It is only when he himself orders or encourages lawlessness on the officer's part that he can be treated as a joint wrong-doer with him, and then he is liable as an actual trespasser and to the extent of his

own misconduct: *Sutherland v. Ingalls*, 68 M. 620.

154. A levy on property of a stranger to the process is a trespass, though the writ is valid: *Weber v. Henry*, 16 M. 399; *Heyman v. Covell*, 36 M. 157.

155. A levy on specific partnership chattels of an attachment against one partner only is a trespass: *Haynes v. Knowles*, 36 M. 407.

156. Where one who has purchased chattels subject to a levy seizes them while under the levy, such seizure is a trespass: *Nelson v. Ferris*, 80 M. 497.

157. Trespass will not lie for a sheriff's entry to make a levy if a judgment in trover has already been recovered against him for the conversion of the property taken thereon: *Finn v. Peck*, 47 M. 208.

As to the liability of officers in trespass, the immunity of judicial action and protection by process, see OFFICERS, VI, (b).

158. In trespass for taking away personal property, a judgment in replevin may be shown in mitigation of damages: *Briggs v. Milburn*, 40 M. 512.

159. In case of such trespass committed under a false pretext of judicial proceedings,—as here, under a chattel mortgage that has ceased to be valid—plaintiff may recover exemplary damages for personal indignities towards him: *Ibid*.

As to damages from trespass by unlawful levy, see DAMAGES, §§ 102, 103, 180.

TRESPASS ON THE CASE.

See, also, TRESPASS.

As to LIBEL, MALICIOUS PROSECUTION, SEDUCTION, SLANDER, see those titles.

1. An action on the case furnishes the remedy where no specific remedy is given for an injury complained of: *Stout v. Keyes*, 2 D. 184.

2. Injury done will not support an action on the case; there must be concurrent wrong: *Macomber v. Nichols*, 34 M. 212.

3. Case is the proper form of action where the injury is consequential and not direct: *Barry v. Peterson*, 48 M. 263.

4. Prior to H. S. § 7759, case would not lie for a wrongful taking of property, the injury being direct and immediate: *Delevan v. Bates*, 1 M. 97.

5. The action for malicious prosecution is now simply in case: *Hamilton v. Smith*, 39 M. 222.

6. Case seems to be the proper action for loss by a carrier of baggage which, with its

owner, was carried free: *Flint & P. M. R. Co. v. Weir*, 87 M. 111.

7. Case is the proper action, under our statute, for waste: *Lee v. Payne*, 4 M. 106.

As to who may sue or be sued in case for waste, see WASTE, §§ 10-12.

8. Case is the proper action for damages from unlawful sales of liquor to plaintiff's husband, etc.: *Friend v. Dunks*, 87 M. 25, 89 M. 733.

9. Case sustained for damages to property communicated by infection: *Eaton v. Winnie*, 20 M. 156.

10. And for damages to one's wagon and sleigh from loads of stone deposited by defendant in a public highway through which plaintiff had to drive to reach his own premises: *Green v. Belitz*, 34 M. 512.

10a. And for injuries resulting from a collision of vehicles caused by defendant's negligence: *Bradford v. Ball*, 38 M. 673.

11. And for damages caused by snow thrown from defendant's premises upon plaintiff's by the former's order: *Barry v. Peterson*, 48 M. 263.

12. Where, after plaintiff in replevin had given bond, the property—a buggy—was delivered to her by the officer, and she seated herself therein, whereupon defendant ordered her to leave, and on her refusing had men take it and draw her about in it through the streets, and afterwards carried it off, he was held liable in case for injury and conversion: *Ford v. Bushor*, 48 M. 534.

13. A creditor, misled by the fraudulent representations of his debtor as to the terms upon which he had compromised with his other creditors, compromised with him. Afterwards, upon discovering the fraud, he brought suit. Held, that by retaining the money received he barred himself from suing in *assumpsit*, but could sue in case (as to the measure of recovery, see DAMAGES, § 255): *Walsh v. Sisson*, 49 M. 423.

14. Destruction of the freehold, as by the washing away of land, is an injury for which no one but the owner of the inheritance can recover: *Anderson v. Thunder Bay River Boom Co.*, 57 M. 216.

15. In an action on the case for the disturbance of rights held under a contract of lease, any one who has rights of possession derived from the lease can sue for their disturbance and recover his actual damages: *Ives v. Willtams*, 53 M. 636.

16. A purchaser of lands at a mortgage sale, after his title is perfected by failure of the mortgager to redeem, may maintain an action on the case for an injury done to the estate

maliciously, and with knowledge of his rights, by the cutting and carrying away growing timber, after the purchase and before the time for redemption expired: *Stout v. Keyes*, 2 D. 184.

17. Where plaintiff claims that defendant has failed in the performance of an undertaking to become co-signer of a note and to pay the same at maturity, in consideration of which promise plaintiff signed it, case is not the proper action; the incidents of case and *assumpsit* differ in several important respects, especially concerning joinder of parties and set-offs: *Potter v. Brown*, 85 M. 274.

18. A count alleging that defendants "falsely and fraudulently" represented a note held by them, and given in exchange for plaintiff's property, to be good and the maker responsible, implies a *scienter*, is a count in case, not in *assumpsit*, and may be joined with one in trover: *Beebe v. Knapp*, 28 M. 53.

19. Where a party who has been induced to exchange personalty by means of a false warranty of the property received sets out in his declaration the false warranty as the means whereby he was injured, and avers a breach, his pleading may be held one in case if the essentials of that action appear: *Carter v. Glass*, 44 M. 154.

As to the pleadings in case, see, further, PLEADINGS, §§ 232-256, 519-546.

20. A parol license is a defence to an action of trespass on the case: *Millerd v. Reeves*, 1 M. 107.

As to the damages in trespass on the case, see DAMAGES.

That judgment in case is not evidence of title to land, see EVIDENCE, § 231.

TRIAL.

In civil actions in circuit courts, see PRACTICE.

In other proceedings and courts, see the references under this heading in the Index.

TROVER.

I. RIGHT OF ACTION; CONVERSION.

- (a) *What constitutes conversion.*
- (b) *When and for what trover lies.*
- (c) *Who can maintain trover.*
- (d) *Who are liable.*
- (e) *Demand and refusal.*

II. PLEADING.

- (a) *The declaration.*
- (b) *Plea and notice.*

III. EVIDENCE.

IV. INSTRUCTIONS.

V. VERDICT.

VI. DAMAGES; MITIGATION.

VII. JUDGMENT AND ITS EFFECT.

As to waiver of trover and suit in *assumpsit*, see *ASSUMPSIT*, II.

When trover barred by judgment in replevin, see *REPLEVIN*, §§ 883, 884.

I. RIGHT OF ACTION; CONVERSION.

(a) *What constitutes conversion.*

1. The effect of a wrongful act by which another is deprived of his property is what constitutes the conversion; the intention is of little consequence except when malicious: *Gibbons v. Farwell*, 63 M. 344.

2. Conversion is not necessarily the complete and absolute deprivation of the property, but may be a partial or temporary deprivation, the owner retaining possession or regaining it; the difference is only a question of damages, which, in the latter case, are usually less than the whole value of the property: *Daggett v. Davis*, 53 M. 35.

3. Until timber has become personalty by severance from the soil it is not subject to conversion, and when severed a conversion may be charged as taking place where it is sold or otherwise disposed of or appropriated, as well as on the first removal: *Greeley v. Stilson*, 27 M. 153.

4. The owner of land from which timber is cut may treat the removal of the logs from his land as a conversion, or the time when such logs are manufactured into lumber in an adjoining county may be treated as the period of conversion: *Final v. Backus*, 18 M. 218.

5. Where the grantee of land knows that the timber has been sold to another with the right to take his own time to remove it, such grantee converts it if he cuts the timber down without giving notice: *Wood v. Elliott*, 51 M. 320.

6. A removal of a growing crop by one who had bought the land at a probate sale with knowledge of the rights of another in the crop was held to be a conversion: *Weldon v. Lytle*, 53 M. 1.

7. Where there have been several unlawful sales on executions against the same party, he may treat each as a conversion and is not required to consolidate: *Wheeler v. Wallace*, 53 M. 864.

8. It is a conversion for the vendor of chattels, after receiving part of the purchase price, to sell them to a third person on the

failure of the first purchaser to take them away promptly at the time fixed: *Bowser v. Birdsell*, 49 M. 5.

9. Property which is taken out from the operation of a chattel mortgage by the mortgager's fraudulent contrivance is wrongfully converted (see *CAPIAS AD RESP.*, § 19): *Hicks's Case*, 20 M. 280.

10. A. contracted with B. for wood, to be placed on the premises of a railway company, and to be inspected by the company's inspector, but to remain B.'s until paid for. A. then contracted with the company to deliver them a large amount of similar wood, and the company's agent, with his co-operation, appropriated B.'s wood delivered but not paid for. Held, a conversion: *Carroll v. McCleary*, 19 M. 98.

11. A paving company that had forfeited its contract left sand in the street it had agreed to pave, which sand was used by another contractor — though the city did not sell it to him — in finishing the job. Held, that there was no conversion by the city: *Detroit v. Michigan Paving Co.*, 38 M. 358.

12. The conversion of a certificate of stock is a conversion of the stock where by means of it the value of the stock is realized: *Morton v. Preston*, 18 M. 60.

13. Withholding possession of a certificate of stock cannot amount to a conversion of the stock itself so long as the certificate is not indorsed; but it may amount to a technical conversion of the certificate: *Daggett v. Davis*, 53 M. 35.

14. Where a defendant disposes of property for his own use it amounts to a conversion, whether he was tenant in common with the plaintiff of the property or otherwise: *Webb v. Mann*, 8 M. 189; *Tolan v. Hodgeboom*, 38 M. 624.

15. Where a tenant in common of grain denies that his co-tenant has any rights and refuses to give up any portion to him, there is a conversion: *Fiquet v. Allison*, 12 M. 328; *McLaughlin v. Salley*, 46 M. 219.

16. And this is true *a fortiori*, where the tenancy in common was only created for the purpose of agency; as where wheat is stored by plaintiff in defendant's elevator: *Erwin v. Clark*, 13 M. 10.

17. Where a tenant in common of an indivisible chattel holding possession thereof claims sole ownership and refuses to allow his co-tenant to hold at all, this is a conversion, and trover lies: *Bray v. Bray*, 30 M. 479; *Grove v. Wise*, 39 M. 161.

18. Where one co-tenant was bound to the other by contract to deliver and divide joint

property at a certain place, but appropriated it to his exclusive use, and under circumstances which rendered a division and delivery in the manner agreed upon impracticable, *held*, that it amounted to a conversion and that trover would lie: *Ripley v. Davis*, 15 M. 75.

19. A. and B. agreed that B. should sow A.'s land and harvest and haul to market such part of the produce as A. should direct; and as to a crop already planted B. agreed to "put the produce in market," and was to receive half the proceeds when it should be sold. It was also agreed that neither should dispose of undivided common property without the other's consent. B. sold a portion of the crop, and stored a portion in a third person's granary without A.'s consent. *Held*, that there was a conversion, and that A. was entitled to recover one-half the market value at the time and place of the conversion: *Baylis v. Cronkite*, 39 M. 413.

20. A refusal to deliver property received in store at the bailor's risk, "to be paid when called for," is a conversion: *Bates v. Stansel*, 19 M. 91.

21. Where one who has a lien on goods leaves them with his bailee, who ships them against his directions, this is a conversion; and the owner's orders to ship them would not justify the bailee though they might affect the question of damages: *Edwards v. Frank*, 40 M. 616.

22. Where, on demand and presentation of the check he has given therefor, the proprietor of a skating rink neglects, simply for the reason that he cannot find them, to deliver skates which he has taken in charge, there is a conversion for which trover lies: *Donlin v. McQuade*, 61 M. 275.

23. Where one who contracted to buy a cabinet organ bound himself to keep the organ in his possession as the property and subject to the directions of the vendor until it was paid for, afterwards, upon separating from his wife, gave the organ to her, *held*, a conversion for which he would be liable in trover to the vendor for the amount still due on the contract: *Johnston v. Whittemore*, 27 M. 463.

24. Where leased property was left with the lessor's assent in possession of the lessee beyond his term, and there is no evidence that it was demanded or distinctly refused, notice by the lessee to the lessor that the latter must remove the property or be charged rent is equivalent to an offer to deliver it, and rebuts the presumption of conversion by the lessee; and this also where such notice is not given directly to the lessor, but to a third person

who communicates it to him: *Thompson v. Moesta*, 27 M. 182.

25. Where, without authority therefor, the bailee of a note delivers it to the maker for destruction, there is a conversion: *Hicks v. Lyle*, 46 M. 488.

26. A. agreed to sell lands to B. to be transferred to C., and took from D., who had agreed to become security for B., his note for the purchase price, on the understanding that the note should be returned and the deed destroyed if the sale to C. did not occur. The sale was not effected, and D. tendered the deed to A. and demanded his note, but tender and demand were refused, A. having discounted the note and used the proceeds. *Held*, that A. had only a conditional title to the note, and that a sale by him was a conversion, rendering him liable in trover: *Brown v. St. Charles*, 66 M. 71.

27. Delivery by a carrier of goods to a third party without the consent of the consignor or consignee is a conversion and renders the carrier liable in trover: *Gibbons v. Farwell*, 63 M. 844.

28. An officer is liable for conversion who levies on property not belonging to the defendant in the writ, inventories it, has it appraised, takes possession of the key to the building in which it is stored and subjects it completely to his control: *Cook v. Hopper*, 23 M. 511.

29. A sale on execution without removal of personal property belonging to a third person is a conversion: *Scudder v. Anderson*, 54 M. 123.

30. Plaintiff sued defendant in trover for selling on a tax-warrant a quantity of hay, which she claimed as her own, to satisfy a tax assessed against her husband. Defendant took no possession of the hay, but advertised and sold it in the mow and left it there. *Held*, no conversion: *Mills v. Van Camp*, 41 M. 645.

31. Judgment in trover for conversion is sustained by a finding that defendant, in making a levy as sheriff upon wheat belonging to plaintiff's father-in-law, had taken away part of a common mass and put the rest in another bin after being warned by plaintiff that he had wheat there which must not be taken: *Behler v. Drury*, 51 M. 111.

32. Retention of fees from the proceeds of a wrongful levy is a conversion: *Bringard v. Stellwagen*, 41 M. 54.

33. And crediting to plaintiff the proceeds of such a levy is no bar to trover for such conversion: *Ibid*.

34. A town treasurer's refusal to pay over public moneys in his hands upon proper demand at the expiration of his term is a conversion: *Monroe v. Whipple*, 56 M. 516.

35. A conversion is not excused by the subsequent taking of the property from defendant on an attachment against plaintiff: *Erie Preserving Co. v. Witherspoon*, 49 M. 877.

(b) *For what trover lies.*

36. Trover or case rather than *assumpsit* is the proper remedy against a gratuitous bailee of bonds who delivers them without receiving anything therefor to a third party claiming title: *Barnum v. Stone*, 27 M. 332.

37. Trover lies for the conversion of a promissory note: *Rose v. Lewis*, 10 M. 483.

38. Or of a note payable in chattels: *Hicks v. Lyle*, 46 M. 488.

39. Trover lies for conversion of shares of stock: *Morton v. Preston*, 18 M. 60. Or for conversion of a stock certificate: *Ibid.*; *Daggett v. Davis*, 53 M. 35.

40. Trover lies to recover the value of goods obtained from plaintiff by false representations recklessly made, without knowing of their truth or falsehood, for a fraudulent purpose: *Beebe v. Knapp*, 28 M. 53.

41. Trover lies for goods obtained by defendant through fraud or deceit practiced on plaintiff; and plaintiff need not have accepted every statement as literally true or count on any precise words. And fraud outside of any written statement made may be considered by the jury: *Heineman v. Steiger*, 54 M. 232.

42. Trover lies to recover the value of wheat received by the proprietor of an elevator to be stored in common bins under a contract to redeliver on return of the receipt properly indorsed: *Erwin v. Clark*, 13 M. 10.

43. Trover will not lie for an animal taken *damage feasant* and held by the distrainer where there is no public pound, and if notice is given as required by H. S. § 8362, or is waived by the owner's conduct: *Norton v. Rockey*, 46 M. 460.

44. Where machinery is sold to be set up in a mill, but with a stipulation that title shall not pass until it is paid for, and without the vendor's knowledge it is so attached to the realty as to make it, under ordinary circumstances, a fixture, and before it is paid for the property is sold to some person who had sufficient knowledge of the owner's claim to put him on inquiry, trover will lie for the conversion of the machinery: *Ingersoll v. Barnes*, 47 M. 104.

45. Trover for conversion will not lie against one who without notice has purchased real property, a part of which had been sold to the lessees of his vendor as personalty, with

a stipulation that title should not pass until it was paid for, but which had been allowed to be made a part of the realty. So *held* where a man bought a mill without notice that the water-wheels were subject to such an arrangement: *Knowlton v. Johnson*, 37 M. 47.

46. Trover does not lie on the refusal to surrender property which plaintiff himself has annexed to the freehold intending it to be a fixture. So *held* where a dealer in gas-manufacturing machines had caused one to be placed in a house which he afterwards found belonged to the wife of the man who contracted that the machine should be placed there: *Morrison v. Berry*, 42 M. 339.

47. Where ties were taken and used by the subcontractor for building a railroad, and the road was in use before it was delivered to the company, the owner of the ties, after waiting until they had become realty, cannot bring trover against the company as for their conversion: *Detroit & B. C. R. Co. v. Busch*, 43 M. 571.

48. One who builds a house on land held by him under a partly-performed parol contract for purchase, and who rents it to a tenant, cannot treat it as personalty and bring trover as for conversion against a third party who ousts the tenant under claim of title: *Bracelin v. McLaren*, 59 M. 827.

49. A. sold logs to B.'s agent under a contract that title should not vest in B. before payment, and then having put B.'s mark on the logs he delivered them to the agent. They were mingled in a boom company's boom with logs similarly marked bought from other parties, from which boom a greater quantity of logs was delivered to B. than was sold by A., and the logs remaining could not be identified as those which A. sold. The agent having failed in his payments, A. notified defendant that he had rescinded the contract and that he claimed the logs. *Held*, that A. could not hold the boom company liable in trover for logs delivered to B. after such notice, or for a *pro rata* share of all the logs bearing B.'s mark that were afloat that year and became mingled in defendant's boom, for by placing B.'s mark on the logs A. waived the contract clause retaining title; and furthermore, in trover it is necessary to identify the property claimed in the declaration: *Hance v. Tittabawassee Boom Co.*, 70 M. 227.

50. A. by mistake cut logs on B.'s land and mixed them with his own. B. subsequently sorted out a quantity equal to what had been taken from his land, and put his brand on them in addition to A.'s. Defendant, a boom company, under the usual contract with A.,

ran all the logs down stream, and on B.'s demand delivered to him the double-branded logs. *Held*, that as A., though an innocent trespasser, acquired no property in B.'s logs, and as he had no lien on them for the labor and expense of cutting and transporting them, and as the conversion of trees into logs does not change the title to the property or destroy its identity, he could not hold defendant liable in trover: *Gates v. Rifle Boom Co.*, 70 M. 309 (May 18, '88).

51. A. sold timber to B. to be cut from A.'s land, and by the contract retained a lien until payment. B. sold shingles manufactured from timber cut under this contract and from other timber to C., who bought relying on B.'s apparently exclusive ownership of the whole, which reliance was warranted by A.'s method of dealing with B. Under such circumstances A. could not lawfully seize and hold, out of the common mass of shingles so sold to C., the quantity called for by his timber, and was liable in trover to C. if he did: *Foster v. Warner*, 49 M. 641.

52. As to the liability in trover of one whose logs have been fraudulently mixed by another with his own, and who has made sale, see *Stephenson v. Little*, 10 M. 433.

Fraudulent intermixture a question for jury, see *infra*, § 169.

(c) *Who can maintain trover.*

53. Where one who claimed certain property, which an officer was about to attach as belonging to another, first told the officer that if he attached it he must do so on his own responsibility, afterwards said that he would give a bond for the release of the property and show it to be his own, and still later said that he had concluded not to give a bond, but should replevy, and then went with the officer to get permission to leave the property in a certain building, and helped to arrange therefor, it was *held* that evidence of this did not prove an agreement that the property might be attached, and that the title should afterwards be tried in replevin, but that the claimant was at liberty, notwithstanding his statements, to bring trover, or to seek any other redress than that proposed: *Cook v. Hopper*, 23 M. 511.

54. A contract provided that certain attachment suits between the parties should be discontinued and the attached goods consigned to a person named, who should deliver them only on joint order signed by all the parties. The suits were discontinued, but the consignee declined to receive the goods, and the former

attaching party got possession of them. *Held*, that as the goods were no longer under attachment, and could not be held under the contract, because the failure of the bailee to act left such contract inoperative, trover would lie for their conversion: *Orr v. Keyes*, 37 M. 385.

55. In trover the right of property is in issue; and, to sustain the action, the plaintiff must prove property in himself, either general or special: *Stephenson v. Little*, 10 M. 433.

56. To entitle plaintiff to recover he must show (1) property in himself, and a right of possession at the time of conversion; and (2) a conversion of the goods by defendant to his own use: *Eureka Iron, etc. Works v. Bresnahan*, 66 M. 489.

57. Plaintiff must affirmatively show his ownership and right of immediate possession: *Ribble v. Lawrence*, 51 M. 569.

58. One who has a present right of possession and a personal interest can bring trover; so *held* of one who at the owner's request had advanced money to pay an hotel-keeper's lien on a boarder's trunk, which payment was accepted by the hotel-keeper, who placed the trunk at plaintiff's disposal, but subsequently sent it elsewhere: *Edwards v. Frank*, 40 M. 616.

59. One who had neither possession nor the immediate right to it cannot maintain trover: *Axford v. Mathews*, 48 M. 327; *Foster v. Lumberman's Mining Co.*, 68 M. 186 (Jan. 12, '88).

60. As plaintiff in trover must have had either actual possession of the property or immediate right to it, judgment on special findings must go for defendant unless such possession or facts showing such right are found: *Stevenson v. Fitzgerald*, 47 M. 166.

61. Trover is not an equitable action; and to maintain it plaintiff must show his right of possession to property described in the declaration: *Hance v. Tittabawassee Boom Co.*, 70 M. 227.

62. Where mortgagers of chattels have assigned for the benefit of their creditors, the assignee cannot bring trover against an officer for goods seized by him under attachment while they were in the mortgagee's possession holding adversely to the assignee: *Axford v. Mathews*, 48 M. 327.

63. One who had the possession of personal property may bring trover against a mere stranger, and the latter cannot question his right: *Cullen v. O'Hara*, 4 M. 182.

64. The possessor of personal property of an intestate may maintain trover for its conversion against a wrong-doer, or one having

no better right than himself; and if the possessor die, his administrator may also bring trover for a conversion of the property taking place after his intestate's death, and prior to his own appointment as administrator: *Ibid*.

65. An officer who has levied on property by virtue of a judgment and execution against the owner and who has left it with a custodian has a sufficient interest to enable him to bring trover for its conversion against one who takes it away under a claim of superior right: *Witherspoon v. Clegg*, 42 M. 484.

66. It seems that one who receipts to a sheriff for property seized under an execution has a sufficient interest to enable him to maintain trover or replevin against a wrong-doer: *Burk v. Webb*, 32 M. 178.

67. A vendee and mortgagee permitted by the vendor and mortgagee to remain in possession of the chattels sold and mortgaged may maintain trover for their value against a trespasser, and the latter cannot defend by showing that the mortgagee has the right of possession: *Parkhurst v. Jacobs*, 17 M. 802.

68. Even before condition broken a mortgagee of chattels entitled under his mortgage to the possession thereof can maintain trover for their conversion: *Grove v. Wise*, 39 M. 161.

69. A mortgagee may maintain trover against a sheriff who, having taken the mortgaged chattels on attachment or execution against the mortgager, sells them in parcels; such a sale is an unlawful conversion: *Worthington v. Hanna*, 23 M. 530; *Ganong v. Green*, 64 M. 488.

70. An assignee for the benefit of creditors can maintain trover against a sheriff for the full value of property assigned subject to valid mortgages and seized by defendant on attachments issued after the assignment was made and before actual filing of the assignee's bond: *Coots v. Radford*, 47 M. 37.

71. Where chattels owned by one partner, but used by the firm without being converted into partnership assets, were mortgaged by the other partner without the owner's knowledge, and were sold by the mortgagee under the mortgage, a former mortgagee from the owner can maintain trover against the latter mortgagee for their conversion: *Cutler v. Hake*, 47 M. 80.

72. The vendee in a bill of sale made by one partner of the partnership property to secure his individual debts cannot maintain trover where the other partner did not sanction the sale, and where there are partnership debts outstanding: *Kingsbury v. Sharp*, 61 M. 216.

73. One cannot maintain trover for timber

excepted and reserved to him in a deed on condition that he remove it by a given date, unless he proves that he took it away in the time limited: *Richards v. Tozer*, 27 M. 451.

74. Creditors to whom goods have been consigned in payment, but who have neither asked for nor accepted such consignment, have no title to such goods, and cannot maintain trover against a third person for their conversion: *Gibbons v. Farwell*, 58 M. 233.

75. Defendants in replevin may maintain trover for the value of property not found on execution issued in their favor for its return; the remedy on the bond is not exclusive: *Smith v. Demarrais*, 39 M. 14.

76. Defendant in replevin may bring trover against plaintiff for property delivered to the latter under the writ if the replevin suit has abated by the justice's removal from his township: *Kidder v. Merryhew*, 32 M. 470.

77. One who has title to goods by virtue of a voluntary assignment to him under a foreign insolvent law may bring trover here for their value against his assignor: *Burrows v. Keays*, 37 M. 430.

78. One who submits peaceably to the seizure of goods under process from the court of bankruptcy is not precluded from bringing trover against the officer who seizes them: *Mathews v. Stewart*, 44 M. 209.

79. An executor may bring trover for a conversion of his testator's goods that occurred but was not sued on in testator's life-time: *Rogers v. Windoes*, 48 M. 628.

80. An administratrix is not estopped from bringing trover for conversion of stock belonging to the estate by her action before appointment in indorsing the certificate of such stock: *Morton v. Preston*, 18 M. 60.

81. A wife may bring trover for the value of an animal belonging to her husband and exempt from execution which is unlawfully sold by a poundmaster: *Ingersoll v. Gage*, 47 M. 121.

82. A township whose treasurer converts its moneys to his own use by not paying them out on proper demand or failing to surrender them at the end of his term may sue him in trover: *Monroe v. Whipple*, 56 M. 516.

83. A right of action in trover for conversion is assignable: *Final v. Backus*, 18 M. 218; *Brady v. Whitney*, 24 M. 154; *Grant v. Smith*, 26 M. 201; *Dayton v. Fargo*, 45 M. 153, 155.

84. And the assignee may sue in his own name: *Final v. Backus*, 18 M. 218; *Grant v. Smith*, 26 M. 201; *Upham v. Dickinson*, 38 M. 333.

85. But one joint wrong-doer, having paid the injured party's claim, cannot take from

him an assignment of his right of action and maintain in his own or in his assignor's name a suit for the amount of the injury: *Upham v. Dickinson*, 38 M. 338.

(d) *Who are liable.*

86. An outstanding title in a third person, to avail as a defence in trover brought against a trespasser, must be such as to displace, repel or exclude the right asserted by the action: *Parkhurst v. Jacobs*, 17 M. 302.

87. One who hired a horse for a specified journey and drove it beyond what his contract contemplated, so that the horse died, was held in trover for its value: *Fisher v. Kyle*, 27 M. 454.

88. Otherwise where the driving was within what the contract contemplated as to distance, time, etc.: *Ruggles v. Fay*, 31 M. 141.

89. A mortgagee of chattels who sells them before condition broken is liable in trover for not restoring them upon a proper tender of the amount due: *Eslow v. Mitchell*, 26 M. 500.

90. A mortgagee of chattels who, where only one instalment of his mortgage is due, sells further after that is satisfied, is chargeable with a conversion: *Brink v. Freoff*, 40 M. 610, 44 M. 69.

91. A vendee, though a *bona fide* one, is liable in trover if he refuses to deliver up the goods to one who holds a mortgage, of which the vendee has notice, that includes them as after-acquired property: *American Cigar Co. v. Foster*, 36 M. 868.

92. Trover will not lie against purchasers on foreclosure of a chattel mortgage where plaintiff is precluded from attacking the mortgage, or has no right to contest the possession: *Lyle v. Palmer*, 42 M. 314.

93. As between a mortgagee of chattels and a second mortgagee, whose mortgage was executed after possession of the property had been surrendered to the former, a sale of the property upon the first mortgage does not constitute such a conversion as to make the first mortgagee liable in trover: *Grimes v. Rose*, 24 M. 416.

94. Any parol understanding between mortgager and mortgagee regarding the possession of the mortgaged chattels could afford third parties who had unlawfully converted the property no protection against the mortgagee's action of trover: *Harvey v. McAdams*, 32 M. 472.

95. A contract purchaser of land who wrongfully cuts and sells timber before making full payment is not liable in trover if he

makes or tenders such payment before suit: *Haven v. Beidler Manuf. Co.*, 40 M. 286.

96. In trover by the purchaser against the vendor for the conversion of wood and timber sold on a contract providing for the removal thereof within specified periods, a finding that the vendor sued for and recovered judgment against the purchaser for failure to perform the contract, which judgment was paid, would support a judgment for the purchaser for the value of the wood and timber, whether the provisions for removal were a covenant or a condition: *Green v. Bennett*, 23 M. 464.

97. Where an iron mine has been sold on execution, one who buys from the execution debtor ore taken out during the period in which such debtor is allowed to hold possession after sale is not liable in trover to the execution purchaser unless the removal of such ore was an injury to the freehold, and unless he was connected with the injury by having taken part in some act of wrong, or was chargeable with notice of facts that would have divested the execution defendant of his *prima facie* right to sell: *Ward v. Carp River Iron Co.*, 47 M. 65, 50 M. 522.

98. A common carrier who obtains possession of goods wrongfully, or without the owner's express or implied consent, and who on demand refuses to deliver them to him, is liable in trover for their value: *Fitch v. Newberry*, 1 D. 1.

99. Where an officer of court has authority to make a sale, *e. g.*, a receiver or assignee in bankruptcy, he is liable in trover if he actually makes a sale, and subsequently refuses to deliver the property sold: *Ives v. Tregent*, 29 M. 390.

100. An officer who replevies the property described in his writ from another than the defendant owning and holding in good faith is liable in trover: *Sexton v. McDowd*, 33 M. 148.

101. A's and B's sheep were pasturing in the same lot, and when B. had his son C. remove his sheep to another lot, C. carelessly removed A's sheep also. B. refused A's request to help separate the flocks, and afterward caused C. to remove all the sheep to his farm, still refusing to separate or help to separate them. A., having thus lost his sheep, may recover their value against B. and C. jointly: *Willey v. Cox*, 25 M. 116.

102. The assent of one of two partners to what is done by a person serving an execution in favor of the firm is presumptively sufficient to hold both partners liable as for conversion: *Harvey v. McAdams*, 32 M. 472.

103. Trover will lie for property taken under

a void judgment, not only against the constable who seized it, but against the judgment creditors if they took part in the proceedings after judgment. So *held* where the creditors were the members of a firm, and one of them received the property, and refused to give it up, while the other declined to do anything about it, but referred the owner to his partner: *Rolfe v. Dudley*, 58 M. 208.

104. In trover against a plaintiff and his attorney and the officer in an attachment suit for a wrongful service, by their joint acts, of the writ of attachment upon a stranger's property, it is no answer to their joint liability that, had the taking proved justifiable, the officer only would have had rightful possession: *Cook v. Hopper*, 28 M. 511.

105. The officer who issues process is not jointly liable for conversion with another officer who in executing such process disregards exemption rights: *Bringard v. Stellwagen*, 41 M. 54.

When trover barred against joint wrongdoer, see LIMITATION OF ACTIONS, § 84.

(e) *Demand and refusal.*

106. One whose property is sold without his authority or ratification need not make formal demand before suing the vendee: *Hake v. Buell*, 50 M. 89.

107. Trover will not lie without demand for goods held by a *bona fide* purchaser under a sale made in apparent conformity to a genuine chattel mortgage: *Rodgers v. Brittain*, 39 M. 477.

108. If a lessor assents to his lessee's holding the leased property over his term, he cannot bring trover against him for its conversion in so doing without first withdrawing his assent and demanding the property. Where the mortgagee of such property told the lessor that it must not be removed from the lessee's possession until the mortgage was reduced, and the lessor said "all right," which the mortgagee communicated to the lessee, telling him not to let the property go, it was *held* that there was some evidence of such assent: *Thompson v. Moesta*, 27 M. 182.

109. Where a purchaser at an execution sale of land has full notice of a mortgagee's claim to machinery in a mill on the land under a mortgage given by the owner of the land and machinery prior to the levy of execution, no demand is necessary before suing for the value of such machinery which the execution purchaser has converted to his own use: *Manwaring v. Jenison*, 61 M. 117.

110. Where a demand for property is made

before bringing trover, and defendant replies that he neither admits nor denies the claim, and shall not consent to plaintiff taking away property nor forbid him to do so, there is a sufficient refusal to establish a conversion: *Ingersoll v. Barnes*, 47 M. 104.

111. Demand and refusal do not of themselves constitute a conversion, but are evidence thereof for a jury: *Daggett v. Davis*, 53 M. 35.

112. While a *bona fide* delay for the purpose of consideration and consultation might shield the holder of goods, yet he is guilty of conversion if he detains them against the demand of one entitled to them merely for the purpose of subjecting such party to the delay of a chancery suit without security against loss or destruction of the property: *Flannery v. Brewer*, 66 M. 509.

II. PLEADING.

(a) *The declaration.*

113. A declaration in trover need not set forth the precise nature or evidence of plaintiff's title or interest — as, for example, a chattel mortgage whereunder he claims: *Harvey v. McAdams*, 32 M. 472.

114. A declaration in trover by a mortgagee need not allege that the mortgager was insolvent or that plaintiff had no other security: *Worthington v. Hanna*, 28 M. 530.

115. A declaration in trover against an officer for the value of exempt goods levied upon must set forth the facts showing the property to be exempt (H. S. § 7343): *McCoy v. Brennan*, 61 M. 362.

116. A declaration in trover by a sheriff against one who has receipted to him for property taken on execution need not allege that the execution was in full force and effect when the demand for the property was made: *Burk v. Webb*, 32 M. 173.

117. A declaration in trover for the conversion of a certificate of stock may, it *seems*, count upon the conversion of the shares as well as of the certificate: *Daggett v. Davis*, 53 M. 35.

118. In trover by an assignee for the benefit of creditors against his assignor for the value of certain promissory notes covered by the assignment but retained by the assignor, the declaration stated the facts and described the notes as divers promissory notes against sundry persons and in various amounts of great value, to wit, of the value of \$4,000. *Held*, that the description was certain enough: *Burrows v. Keays*, 37 M. 430.

119. Where one sues in trover for the value of property with which defendant's false representations have induced him to part he need not set up such representations in his declaration: *Beebe v. Knapp*, 28 M. 53.

120. A declaration in trover by the execution purchaser of an iron mine against one who had bought of the judgment debtor ore taken from the mine after the execution sale, but pending the time allowed for redemption, etc., must allege that the taking of the ore injured the freehold: *Ward v. Carp River Iron Co.*, 47 M. 65.

121. And the mere allegation that the execution defendant had taken out forty thousand tons of ore to the injury of the freehold, would not suffice unless it was also alleged that the removal of the specific quantity (about eight thousand tons) sold to defendant injured the freehold: *Id.*, 50 M. 522.

122. The use of the term "assignee," etc., after plaintiff's name in the declaration, held to be mere *descriptio personæ*, and not to authorize the construction that the declaration purported to be for a cause of action that had accrued to the assignors prior to the assignment, and claimed to have been passed by the assignment to plaintiff: *Bloom v. Sexton*, 33 M. 181.

123. A count in trover for surplus retained by a chattel mortgagee after sale may be added to a declaration in case for the damages arising from unlawful conduct in foreclosing: *Bearas v. Preston*, 66 M. 11.

124. The ordinary count in trover may be joined with a count in case for obtaining the property by false and fraudulent representations: *Beebe v. Knapp*, 28 M. 53.

125. A count in trover and one in case for the alleged wrongful taking of personal property by a sheriff for the debt of a third party can be joined, and it is error for the court to compel an election on the trial (by two justices; the other two concurring in the result of the case): *Wait v. Kellogg*, 63 M. 183.

(b) *Plea and notice.*

126. Where a plea in trover contains the substance of the general issue and a good notice it is sufficient: *Adams v. Kellogg*, 63 M. 105.

127. Under the general issue in trover defendant may show property in a third person, though plaintiff was in possession: *Stephenson v. Little*, 10 M. 433.

128. Under the general issue in trover defendant may prove that the title to the goods was in himself, either absolutely as general

owner, or specially as bailee, or by way of lien: *Eureka Iron, etc. Works v. Bresnahan*, 66 M. 489.

129. In trover for chattels taken in attachment against a third person defendant may, without giving special notice of such defence, attack as fraudulent as against creditors a chattel mortgage under which plaintiff claims; though, if the declaration contains a count in trespass on the case setting out his source of title, such a notice, it seems, is necessary: *Ibid.* See *Wait v. Kellogg*, 63 M. 133.

130. Where an assignee brings trover for goods taken in attachment against his assignor, defendant must, with the general issue, give notice of his attachment, in order to admit evidence of justification thereunder; and none but attaching or judgment creditors can attack the validity of the assignment: *Fry v. Soper*, 30 M. 727; *Frankel v. Coots*, 41 M. 75.

131. In trover by the assignee of a chattel mortgage against an officer who levies upon the chattels by virtue of an execution against one to whom the mortgagor has sold the chattels subject to the mortgage, it is not necessary to give special notice of justification under the judgment, etc.: *McLaughlin v. Smith*, 45 M. 277.

III. EVIDENCE.

As to evidence in mitigation of damages, see *infra*, §§ 183-188.

132. In trover it is competent for defendant to impeach plaintiff's right of action by showing that the title to the property was in a third person at the time suit was brought: *Stephenson v. Little*, 10 M. 433; *Westbrook v. Miller*, 64 M. 129; *Eureka, etc. Iron Works v. Bresnahan*, 66 M. 489; *Seymour v. Peters*, 67 M. 415.

133. Where defendant was not a mere wanton trespasser interfering without pretence of right with plaintiff's peaceable possession, he is entitled to show as a complete defence that the title and the right of immediate possession were in a third person when the suit was brought: *Ribble v. Lawrence*, 51 M. 560.

134. An officer sued in trover for the value of property seized by him on attachment may show in defence that plaintiff at the time of the seizure had parted with both possession and title and was holding as agent of a third person: *Stearns v. Vincent*, 30 M. 209.

135. In an action of trover the nature of plaintiff's possession can be inquired into on cross-examining him: *Ibid.*

136. In trover for value of mortgaged

goods seized on execution against the mortgager an agreement between the mortgager and mortgagee by which the latter was entitled to immediate possession with right to hold until mortgage was due or paid, was held admissible in evidence: *Ganong v. Green*, 64 M. 488, 71 M. 1.

137. In trover, by an administrator against a son of the deceased who had carried on the latter's farm in consideration of certain produce and farm property that was claimed to belong to the estate and to have been converted by the defendant, it was held incumbent on the plaintiff to show definitely that the specific property belonged to the estate; also, that evidence that the intestate had, years before, owned and sold a horse and wagon, and had bought a farm which also, nearly twenty years before, he had sold, buying the farm on which this personalty belonged in his wife's name to avoid payment of his debts, was neither pertinent nor material, at least in the absence of any showing that there were any creditors, or that the prosecution was in the interest of creditors who were in position to attack the conveyance: *Hill v. Chambers*, 80 M. 422.

138. Evidence showing the continued possession of personal property at a homestead by an intestate's widow is properly admitted as bearing on a claim that it was converted by a son of deceased: *Howard v. Patrick*, 48 M. 121.

139. In trover for a wrongful levy defendant's motives are immaterial: *Allen v. Kinyon*, 41 M. 281.

140. In trover for the conversion of timber evidence that defendant, before cutting the timber, bought the land from one claiming to have a tax-title, was offered to show that defendant in cutting the timber honestly supposed that he owned the land and was acting in good faith. Held that, as punitive damages were not sought or given, but only the value of the logs at the place to which defendant took them, the rejection of such evidence could do no harm: *Grant v. Smith*, 26 M. 201.

141. In an action of trover for the conversion of a heifer which both parties claimed to have raised, and where the question is as to identity, it is competent to ask a witness who has testified to having been among plaintiff's herd of cattle for two or three years as to their being gentle and coming about people. All such other facts and circumstances or characteristics, besides color, as would tend to throw light on the identity would be competent: *De Armond v. Neasmith*, 82 M. 231.

142. One sued in trover for the conversion

of hoops may, to identify and prove his title to them, show that they were taken from certain lands and that he was the owner of such lands. This does not bring the matter of title to lands in question: *Hart v. Hart*, 48 M. 175.

143. In trover for converting promissory notes plaintiff need not show affirmatively the value of the notes. If they were worthless, that is to be shown in defence: *Burrows v. Keays*, 37 M. 430.

144. In trover the value of the property in suit only is material, and evidence as to the value of other property described in the bill of sale under which plaintiff claims title is inadmissible: *Burrill v. Wilcox Lumber Co.*, 65 M. 571.

145. In trover for a conversion by means of an execution levy and sale, the concession on the trial that the levy was legal does not preclude objections to the validity of the sale: *Harvey v. McAdams*, 32 M. 472.

146. In trover by an assignee for conversion of property levied upon by defendant, by virtue of executions against the assignor, evidence on behalf of defendant that the property levied upon was held and sold under a prior levy is admissible to show that defendant had not damnified the plaintiff and had not converted the goods; so, also, is evidence admissible to show that the goods levied on were held and sold for railroad charges which were a prior lien: *Smith v. Mitchell*, 12 M. 180.

147. In an action of trover for property sold under execution, a judgment in replevin rendered in favor of third parties against plaintiff after the sale was held inadmissible as evidence against plaintiff: *Lansing v. Sherman*, 30 M. 49.

148. In an action for the conversion of a portion of certain wheat by one of the parties to a contract under which the proceeds of its sale were to be shared, evidence that the barn containing the rest had been burned and the other party had received the insurance was held inadmissible: *Baylis v. Cronkite*, 39 M. 413.

149. In trover by an officer against persons who had converted a growing crop which he had attached, the judgment in attachment was admitted, though rendered after the conversion, to show the amount of plaintiff's lien: *Grover v. Buck*, 34 M. 519.

150. A defendant sued in trover for the value of a cow may show that he sold the cow by parol bargain to one through whom plaintiff claims title, upon the express condition that title should remain in defendant until payment; that nothing had been paid, and that the condition of sale had neither been per-

formed nor waived. Such conditional sale could only be proved by showing what was said and done between the parties, and the fact that plaintiff was not present could not affect it: *Fifield v. Elmer*, 25 M. 48.

151. In an action of trover for goods claimed to have been deposited with defendants as warehousemen, and which they made no claim of title or of right to hold for any third party, an inquiry as to whether plaintiff purchased the goods with her own money is irrelevant to the issue: *Bissell v. Starr*, 82 M. 297.

152. Neither is it material to inquire whether plaintiff would or would not have sold this property at a certain price at auction; the answer to such a question could not establish the measure of damages: *Ibid.*

153. In such an action it is not error to include an inquiry of one of the defendants as to the probability of their having delivered the goods by mistake to some one else: *Ibid.*

154. It is competent in a suit for conversion to give evidence tending to show that the defendant had received the goods and delivered them to a third person; also that they had the goods about the time they were demanded by the plaintiff and did not deliver them to her, but denied having ever received them: *Ibid.*

155. In trover for the value of property taken from an agent of the plaintiff on a writ of attachment at the suit of a creditor of such agent, the question is as to the ownership of such property, and all facts and circumstances tending to show the agent's attitude toward the property at the time the plaintiff in trover claimed to have bought it are admissible in evidence: *Adams v. Kellogg*, 68 M. 105.

156. In an action against a constable for wrongfully selling plaintiff's property under an attachment against his son from whom plaintiff claims to have purchased, evidence that the son was at the time of the alleged sale insolvent, and had conveyed his property in fraud of his creditors, is admissible: *Whittle v. Bailes*, 65 M. 640.

157. In trover by chattel mortgagees against a sheriff who levied execution upon the goods in a suit by third parties against the mortgager, a judgment in favor of the plaintiffs in the execution must be alleged and proved to authorize the introduction of proof that the mortgage was fraudulent: *Comstock v. Hollon*, 2 M. 855.

158. Where a defendant in trover seeks to defend on the ground of the seizure of the property under legal process, the proceedings upon which the officer's writ or order is-

sued must be put in evidence: *Gibbons v. Farwell*, 68 M. 344.

159. In trover by a vendee for the value of property attached by the vendor's creditors, where the sale to plaintiff was attacked as void as against the creditors, statements of the vendor made after the attachment to a third party are inadmissible, as is also testimony concerning the extravagance of plaintiff's daughter, to whom, as defendant claimed, the vendor was betrothed: *Lewis v. Rice*, 61 M. 97.

160. In trover by the mortgagee of chattels against an officer who had seized the goods and afterwards sold them on an execution under a judgment in an attachment suit brought by creditors against the mortgagor, plaintiff in trover may show that such judgment was fraudulent; but if the evidence offered simply tends to show that the judgment was too large, it is properly excluded. Such fact, if established, would not invalidate the judgment; nor would it injure plaintiff in trover, as, if the property was sold for more than was actually due the plaintiff in the execution, the sheriff would have been obliged to apply the surplus upon the other executions held by him, which were more than sufficient to exhaust it: *Eureka Iron, etc. Works v. Bresnahan*, 66 M. 489.

161. In an action of trover for the service of a writ of attachment against another upon plaintiff's property it is competent for plaintiff to disprove the alleged indebtedness of the defendant in attachment: *Cook v. Hopper*, 28 M. 511.

162. Where an officer is sued in trover or replevin for seizing plaintiff's goods under an attachment suit against plaintiff's vendor which has not yet gone to judgment, he cannot attack as fraudulent the sale to plaintiff's vendor until he has shown by other evidence than the affidavit in attachment the fact that such vendor, at the time of such sale, was indebted to the plaintiff in attachment: *Ibid.*; *Manning v. Bresnahan*, 68 M. 584.

163. In trover by one who claimed under a chattel mortgage, which mortgage was attacked as fraudulent, the records in several attachment suits were held admissible as evidence tending to show the mortgager's insolvency, though the sale of the goods in question had only taken place in one of such suits: *Eureka Iron, etc. Works v. Bresnahan*, 66 M. 489.

164. A landlord sued in trover for seizing a crop which his tenant had sold in good faith to plaintiff was not allowed to justify himself by producing the record of a summary proceed-

ing to recover possession of the premises: *Miller v. Havens*, 51 M. 482.

165. A carrier sued in trover for the value of goods which it has allowed an officer to take from its possession cannot show such taking as a defence unless it shows also that the officer had a legal right to take them by virtue of his writ: *Gibbons v. Farwell*, 68 M. 844.

166. A suit in trover puts in question only such rights as existed when it was begun, and acts making defendant a trespasser *ab initio* must appear to have been done before suit to justify striking out evidence that would otherwise establish a defence: *Norton v. Rocky*, 46 M. 460.

167. In trover for the conversion of goods taken on execution plaintiff cannot introduce an estimate of damages due him for the consequent breaking up of his business until he has shown that his business was actually broken up: *Dyer v. Rosenthal*, 45 M. 588.

168. In trover for the value of a box of books plaintiff, while testifying to an interview with defendant, was asked, "Did you then demand the box?" She answered "Yes." Held, that such answer, in the absence of objection to the question asked as leading or incompetent, was proper to go to the jury as evidence of a demand: *Bissell v. Starr*, 82 M. 297.

As to evidence of ownership in trover, see EVIDENCE, §§ 84-88, 120, 1560-1564.

Further as to evidence, see EVIDENCE, §§ 170, 196, 199, 240, 248, 244, 387, 341, 963.

IV. INSTRUCTIONS.

169. In trover for the conversion of logs there was no controversy as to plaintiff's right to recover for a part of the logs claimed, except that they were claimed to have been fraudulently and inextricably commingled with defendant's logs, and evidence of such commingling was given. Held, that an instruction that plaintiff was not entitled to recover for any of the logs was erroneous; the question whether there was such admixture was one of fact for the jury under proper instructions: *Johnson v. Ballou*, 25 M. 460.

170. A charge that plaintiff cannot recover if defendant's vendor owned the property when he passed it to defendant is not error where defendant claims through a different chain of title; if the property did not belong to plaintiff, he cannot complain of its conversion: *Burdick v. Michael*, 82 M. 246.

171. Nor is there error in charging that if the property was purchased by defendant's

vendor and paid for out of farm produce, such purchase would be lawful if he had received the produce in payment for his work; it could make no difference what was paid for it by defendant's vendor if he paid his own, and not plaintiff's, money or other consideration: *Ibid*.

172. A charge in an action of trover that no sale of the property to a third party after suit begun would affect plaintiff's right to recover is erroneous: *Brady v. Whitney*, 24 M. 154.

173. So is a charge that "a sale of the plaintiff's claim for damages by reason of the unlawful taking and carrying away of the property would not affect plaintiff's right to recover": *Ibid*.

174. In a suit against a sheriff for the conversion of an article seized under a writ of replevin, held, that the special verdict rendered in the replevin suit, that defendant was not in possession when the article was demanded or suit was brought, would not warrant an instruction that the right of plaintiff in replevin had been adversely decided by it, and that evidence to the contrary need not be considered: *Sexton v. McDowd*, 38 M. 148.

175. Held, in a particular case, that the elements of a supposed estoppel against the plaintiff from claiming ownership should have been submitted to the jury under hypothetical instructions: *Ashman v. Epsteine*, 50 M. 360.

V. VERDICT.

176. In trover for property seized to satisfy a tax, the trial court charged that if plaintiff was owner of the property at the time of the seizure he was entitled to recover. Held, that a verdict against him was conclusive against his ownership, and that if a third party had any grievance for an unauthorized seizure it could not be redressed in that suit: *Sutton v. Greene*, 51 M. 118.

177. In trover for goods sold by plaintiff relying on false representations of the buyer, and by the latter mortgaged to defendant to defraud plaintiff, a verdict for plaintiff is conclusive on the question of defendant's participation in the fraud: *Robinson v. Walsh*, 54 M. 506.

VI. DAMAGES; MITIGATION.

As to the measure of damages in trover, see DAMAGES, §§ 299-338.

As to evidence of the value, see EVIDENCE, I, (f); also §§ 962, 964.

178. After acquiescing for a long time in

another's possession with knowledge of his claim of right, and without asserting an adverse claim, plaintiff in trover is not entitled to damages that would not have been incurred if he had asserted his claim: *Rodgers v. Brittain*, 89 M. 477.

179. Where the declaration does not allege special damage, none are recoverable except such as might naturally follow in any case of unlawful conversion irrespective of special circumstances: *Brink v. Freoff*, 44 M. 69.

180. Where property in one's possession and claim is levied on and publicly sold as fraudulently transferred to him and as really belonging to other persons, he is not limited in his recovery in trover to the amount which the property brought at the sale, but may show that it did not bring its full value, and is not chargeable with fault in respect to such sale if he did not actively interfere to prevent the property bringing a fair value: *Wheeler v. Wallace*, 53 M. 355.

181. Plaintiff in trover cannot claim full damages unless he is in such a position that title to the controverted property will pass from himself to defendant on payment of the judgment: *Brady v. Whitney*, 24 M. 154.

182. And the utmost that a party who has transferred his title to the property converted after the conversion can claim is damages analogous to those rendered where the property has been restored and accepted, viz.: nominal damages only, unless there was special damage caused by the taking out and detention: *Ibid.*

183. A defendant in trover may show in mitigation of damages that the goods have been voluntarily restored and accepted, or have been recovered by plaintiff at an expense to him of less than their value: *Northrup v. McGill*, 27 M. 284.

184. But he cannot show in mitigation that without plaintiff's direction or sanction he has applied the whole or a part of the proceeds of the unlawful conversion upon a note due him from plaintiff, and not attaching to the property by way of lien or security: *Ibid.*

185. Nor is an appropriation to plaintiff's credit of the proceeds of an unlawful levy available to defendant even by way of mitigation unless assented to by plaintiff: *Bringard v. Stellwagen*, 41 M. 54.

186. Nor can a subsequent sale on legal proceedings in the trespasser's favor against the owner be shown to reduce the damages: *Dalton v. Laudahn*, 27 M. 529.

187. And where a seizure was premature the damages cannot be reduced by a showing that the defendant could or did legally make

a seizure of the same property at a later date: *Ibid.*

188. A taking of the converted property from defendant on a third party's attachment against plaintiff was not allowed to be shown in mitigation: *Erie Preserving Co. v. Witherpoon*, 49 M. 377.

VII. JUDGMENT AND ITS EFFECT.

189. A defendant in trover against whom damages are given for the full value of the property converted gets title to the property, either by the judgment itself or by its payment: *Hoag v. Breman*, 3 M. 160; *Brady v. Whitney*, 24 M. 154.

190. And this is so though the court erred in giving such judgment when it should have given judgment for a temporary detention; defendant, having submitted to the judgment by paying it, cannot be relieved in a subsequent action of replevin: *Hoag v. Breman*, 3 M. 160.

191. A recovery for conversion terminates plaintiff's right to reclaim the chattels converted and leaves them as the sole property of defendants: *Kenyon v. Woodruff*, 33 M. 310.

192. Where parties are jointly guilty of conversion, and judgment has been recovered against one of them therefor, the injured party, by proceeding to enforce collection against him under that judgment, elects to look to him alone, and bars himself from having recourse to the rest: *Ibid.*

193. A judgment in trover against a sheriff for conversion by levy precludes trespass for entry to make the levy: *Finn v. Peck*, 47 M. 208.

194. Offset on accounting in equity of judgment in trover between same parties, see *McGraw v. Dole*, 63 M. 1.

TRUSTS.

I. IN GENERAL; HOW CREATED; VALIDITY; CONSTRUCTION.

(a) *In general.*

(b) *How created.*

1. Express trusts.
2. Implied trusts.
3. Resulting trusts.
4. Constructive trusts.

(c) *Validity.*

1. In general.
2. Perpetuities; accumulations.

(d) *Construction.*

II. TRUSTEES.

- (a) *Appointment and acceptance.*
- (b) *Resignation and removal.*
- (c) *Nature and extent of trustee's estate.*
- (d) *Powers and rights.*
- (e) *Duties and liabilities.*
- (f) *Accounts; compensation.*
- (g) *Investments.*
- (h) *Sales and mortgages.*

III. CESTUIS QUE TRUSTENT.

- (a) *Nature and extent of their estate.*
- (b) *Rights, powers, etc.*

IV. SUITS RESPECTING TRUST PROPERTY; ENFORCEMENT OF TRUSTS; PURSUING TRUST FUNDS.

- (a) *In general.*
- (b) *Parties; pleading.*
- (c) *Practice; evidence.*

V. DISCHARGE OR TERMINATION OF TRUSTS; REVOCATION.

I. IN GENERAL; HOW CREATED; VALIDITY; CONSTRUCTION.

(a) *In general.*

1. It seems that the English statute of uses never had any operation within the territory now constituting the state of Michigan: *Trask v. Green*, 9 M. 353.

2. If it had it was abolished by the act of Sept. 16, 1810 (Cass Code, 119), which repealed all acts of the British parliament and of the authorities of Canada; and from that time up to March 1, 1847, there was no analogous statute here: *Ibid.*; *Ready v. Kearsley*, 14 M. 215.

3. There was no statute of uses here until March 1, 1847: *Mandlebaum v. McDonell*, 29 M. 78.

4. The statute of charitable uses has never been in force in this state: *Newark Methodist Church v. Clark*, 41 M. 730; *Hathaway v. New Baltimore*, 48 M. 251.

5. Where the legal title in land is conveyed to certain persons who give back a written agreement to reconvey in case they are held harmless against certain liabilities as sureties, reserving, however, the right, in case they are found liable, to turn out the property to the creditor, or to hold it until discharged by him, they hold the legal title in trust and are not mortgagees; and the land is not subject to execution against the debtor: *Gorham v. Arnold*, 22 M. 247.

6. A woman made her insolvent husband her executor, and gave him the use for his life-time of what was left after certain bequests

were paid, the remainder on his death to go as directed. The principal was required to be kept invested, and not to be encroached upon except in emergencies. *Held*, that a trust for the husband's benefit was created, and that there was nothing which his creditors could reach: *Cummings v. Corey*, 58 M. 494.

7. To make an express trust valid under the statute of frauds, the terms and conditions of the trust must be in writing under the hand of the party to be charged: *Wright v. King*, H. 12.

8. The existence of an express trust in lands may be shown by parol, but there must be some memorandum in writing showing its terms: *Bernard v. Bougard*, H. 180.

9. Express trusts in lands must appear on the face of the deed, or, at least, by some instrument in writing: *Trask v. Green*, 9 M. 353.

10. An express trust in favor of one who furnishes the consideration, but procures the deed to be made to another, cannot be raised by parol agreement: *Groesbeck v. Seeley*, 13 M. 829.

11. Sons bought land and had it conveyed by their vendor to their father upon the oral understanding that he would deed to such of them as they might require. He finally conveyed in pursuance of such agreement. *Held*, that as an express trust in land cannot be created by parol, the sons acquired no interest before the conveyance to them: *Newton v. Sly*, 15 M. 391.

12. Where one orally promised another for a reasonable compensation to advance money and buy up claims against the latter's lands, and thereby save them for his benefit, the promise was held void under the statute of frauds as being an attempt by naked parol agreement to create a trust in lands thereafter to be acquired at the promisor's expense: *Taylor v. Boardman*, 24 M. 287.

13. Under a land contract the vendee was to pay the tax but did not, and his brother bought the land at a tax-sale, orally agreeing to hold in trust for the vendee. *Held*, that the oral trust was void under the statute: *Jones v. Wells*, 81 M. 170.

14. Where property is conveyed by an ordinary deed which contains no condition or declaration of trust, but declares the uses to be for the grantee's benefit, no trust can arise to the grantor or the grantor's heirs from any parol agreement in contravention of the deed: *Brown v. Bronson*, 85 M. 415.

15. An oral agreement to hold lands for another after bidding them in on execution sale against him is void under H. S. §§ 5569,

6204, being an attempt to create a parol trust: *Cobb v. Cook*, 49 M. 11.

16. An express trust cannot exist without a written agreement; so *held* where land was bought on partnership account, but the title was placed for convenience in one partner's name, with an oral understanding that he should hold for the firm's benefit: *Pulford v. Morton*, 62 M. 25.

17. The statute prevents a delivery of an assignment of a land contract accompanied by a parol agreement as to the terms of the transfer from being regarded as creating a trust in the person to whom delivery is made: *Ortmann v. Plummer*, 52 M. 76.

18. An express trust relating to land cannot be engrafted by parol on a conveyance, and such parol trust is void: *Shafter v. Huntington*, 53 M. 810.

19. So *held* where, for the purpose of settling the estate of an intestate who left two children only, his daughter quitclaimed a part of it to her brother, and the latter, with his sister's consent, quitclaimed other lands to her husband on an oral understanding that he should hold the property for the benefit of their children, whereas, instead of doing so, he mortgaged it for his own: *Ibid*.

20. The validity of an executed parol trust in lands cannot be questioned: *Barber v. Milner*, 43 M. 248.

21. Although a parol trust in lands is void, the trustee may recognize it, and other persons whose equities are not affected thereby cannot interfere: *Patton v. Chamberlain*, 44 M. 5.

22. If a party holding under a parol trust admits it in writing—as by an answer in chancery—there is a sufficient written declaration of the trust to satisfy the statute of frauds: *Ibid*.

23. Such trusts as arise or result by implication of law are excepted from the statute requiring trusts concerning lands to be in writing: *Rood v. Winslow*, 2 D. 68.

24. A trust to hold personalty until the owner's death and then to deliver it to his daughter does not come within the statute of frauds, and need not be shown by writing: *Bostwick v. Mahaffey*, 48 M. 842.

25. Defendant held land on a trust void, because in parol. He repeatedly admitted—orally—that he held the land in trust, and after he sold it he admitted that he held its proceeds in trust. *Held*, that as a trust in personalty need not be in writing, he should be charged as trustee on the strength of his admissions after the land was sold: *Calder v. Moran*, 49 M. 14.

26. A trust may be inferred from the facts and circumstances of a particular case; so *held* where a father had placed personalty in his son's hands under an arrangement for its investment in business by the son for their mutual advantage: *Chadwick v. Chadwick*, 59 M. 87.

27. Where adult children conveyed land to their father on the oral understanding that he was to invest the proceeds from an anticipated sale thereof, he to use the interest during his life, but to reserve the principal for them at his death, *held*, that such a trust was valid and enforceable, and that a third party who had knowledge of the rights of the *cestuis que trustent* could not be a *bona fide* holder of a mortgage representing a portion of the trust fund and assigned to her by the trustee: *Edinger v. Heiser*, 62 M. 598.

28. A parol trust in personalty is admitted to be shown against all but *bona fide* purchasers, whether it be to create a special interest, a defeasance, or other similar equity: *Bowker v. Johnson*, 17 M. 42.

29. Parol evidence is admissible to affix the character of a trust to a promissory note payable to the party claimed to be a trustee: *Catlin v. Birchard*, 18 M. 110.

30. Trusts in personal property should not be established by parol evidence, especially after considerable time has elapsed, unless very clear and confirmed by the subsequent conduct of the parties: *Crissman v. Crissman*, 23 M. 217.

31. In a particular case, where complainant claimed that her husband had shortly before his death conveyed lands to defendant in trust for her, while defendant alleged that they were conveyed to him in trust for decedent's children, the evidence was conflicting, but the presumption being against the father's intention to disinherit his children, complainant's bill was dismissed: *Green v. Begole*, 70 M. 603 (June 22, '88).

32. One good trust in a deed of assignment does not make an otherwise illegal instrument valid: *Kirby v. Ingersoll*, H. 193, 1 D. 477.

Attorney of judgment creditor held as trustee in respect of property bid off in his own name, see ATTORNEYS, § 41.

(b) *How created.*

1. Express trusts.

33. Between Sept. 16, 1810, and March 1, 1847, there was no statute of uses in force in Michigan, and nothing—except statutory requirement of writing—to prevent the crea-

tion of any trust that would have been valid at common law: *Trask v. Green*, 9 M. 358; *Ready v. Kearsley*, 14 M. 215. See *Mandlebaum v. McDonell*, 29 M. 78.

34. Anything which creates a trust in favor of the donee is sufficient if the trust be lawful; a declaration of trust is not confined to any express form of words, but may be indicated by the character of the instrument: *Ellis v. Secor*, 81 M. 185. No particular form of words is required to create a trust: *Chadwick v. Chadwick*, 59 M. 87.

35. Under H. S. § 5578, subd. 5, providing that express trusts may be created where the "trust is fully expressed and clearly defined upon the face of the instrument creating it," such instrument may consist of a series of letters and agreements which, construed together, show a purpose to create the trust: *Loring v. Palmer*, 118 U. S. 321.

36. The fact that the respective interests of the beneficiaries are not stated in the instrument creating the trust does not render the trust indefinite; the presumption being that their interests are equal: *Ibid.*

37. Under H. S. § 5578, an instrument expressly declaring that parties executing it hold certain lands in trust for themselves and others named creates an express trust, and does not operate as a conveyance of the land: *Culbertson v. Witbeck Co.*, 127 U. S. 826.

38. A written agreement signed by the officers of a mining association and declaring the other party thereto, for his services in hunting ore, entitled to a specific undivided share in certain described lands held by them under a lease, will be sustained as a valid agreement and declaration of trust for the designated interest in the title when that shall have been acquired by the lessee: *Compo v. Jackson Iron Co.*, 49 M. 39.

39. Where a wife signs a deed, given as security, only on condition that on payment of the amount secured the grantee shall convey the premises to a third person, the grantee cannot dispose of the property otherwise; and after he has conveyed as agreed, the validity of the trust to him cannot be questioned on the ground that it was not in writing: *Barber v. Milner*, 43 M. 248.

40. For a discussion as to whether certain facts established a trust or an agency, see *Titus v. Minnesota Mining Co.*, 8 M. 183.

41. A trust, and not a mere agency, was held to be created by an instrument executed and delivered to a brother, and intrusting a certain specified fund in cash and notes to his "good faith and sound judgment, . . . to use and expend the same so far as may be

necessary for the comfortable support" of the party executing the trust and of his sister, during the remainder of their lives, the surplus, if any, to be divided among his heirs according to directions. Held, also, that this trust remained in force so long as one of the beneficiaries was entitled to support, and was not revoked by the death of the maker of the trust: *Lyle v. Burke*, 40 M. 499.

42. An instrument executed for the benefit of specified creditors, and purporting to convey property to certain persons who were also creditors, on their express agreement to sell it and pay the debts as far as the proceeds would go, and, if there should be any surplus, pay other debts, and sell back to the grantors any unsold property in case they should furnish money within a year to pay off the secured debts, is not a chattel mortgage, but a deed in trust vesting trustees with absolute title and right of sale until the trust purposes should be accomplished: *Iron Cliffs Co. v. Beecher*, 50 M. 486.

43. An insolvent firm made an absolute warranty deed of its business and other property to its principal creditor. The latter conveyed it in trust to certain persons to be managed for his sole benefit, and empowered them to carry on the business, buy property, borrow money, sell lands and personalty and exercise other powers not inherent in mortgage relations. But at the same time the creditor and the trustees together executed a declaration of trust in favor of the firm, whereby after the trust should be satisfied the remainder of the property was to be conveyed to it. Held, that as between these parties this arrangement established a trust and not merely a mortgage relation, and that it placed the creditor under fiduciary obligations to the debtor: *Loud v. Winchester*, 52 M. 174.

44. Where a will designated certain persons executors only, and no words of grant or devise were employed to indicate a purpose that any estate should pass to or be vested in them, and the only powers conferred upon them beyond those of executors were that they should have the "control and direction of" testator's son, and should determine the ultimate disposition of the estate by the judgment they should form of the son's past and future conduct, held, that no trust was thus created: *Rock River Paper Mill Co. v. Fisk*, 47 M. 212. Compare *Crooks v. Whitford*, 47 M. 283.

2. Implied trusts.

45. Where A. was pardoned on condition that he should secure the payment of \$1,000

to the county, and the county commissioners took a mortgage to themselves instead of the county, the mortgage was held to be good, and the commissioners were declared trustees for the county, the law implying a trust from the nature of the transaction: *Rood v. Winslow*, W. 340, 2 D. 68.

46. Two tenants in common agreed to hold separate parcels of their land in severalty, but no releases were executed. Each afterwards sold his parcel, giving a deed of the whole interest as if he had had a release from his co-tenant. A grantee of one of them sold, taking back a mortgage for the purchase price, and the other, by an understanding with the mortgager, gave a deed to the mortgager's brothers with the intention thereby to perfect the title conveyed by his co-tenant. A small consideration was paid for this deed, which, however, the grantor did not demand. Proceedings being taken to foreclose the mortgage, this deed was set up as a defence to one-half its amount on the ground of failure of consideration. It was held that the grantee in the deed, under the circumstances, took it as a trustee, and the deed must be regarded as a mere release of the grantor's interest in pursuance of the original understanding of the parties: *Adams v. Bradley*, 12 M. 346.

47. The managing brother of five to whom mining property had been left in common acquired contiguous property, and his brothers sought to charge it with a trust for all. Held, that as the facts did not show an agreement that it should be so taken and held, and there being no fraud on the manager's part and no fraudulent representations, and he not appearing to owe his brothers any duty in the matter, a trust should not be declared: *Pierce v. Pierce*, 55 M. 629.

48. The heirs of a deceased partner hold the legal title to firm real estate in trust for the equitable purposes of the firm: *Merritt v. Dickey*, 38 M. 41.

3. Resulting trusts.

49. A resulting trust cannot be inferred where there is anything in the relations of the parties and the facts of the transactions which would fairly go to rebut it: *Waterman v. Seeley*, 28 M. 77.

50. Where two persons claim equities in lands, and one of them presents a claim thereto which is allowed by the government land board, there is no resulting trust in favor of the other which can be enforced in equity: *Bernard v. Bougard*, H. 180.

51. The act of congress of March 3, 1807,

"regulating the grants of land in the territory of Michigan," recognized no right in claimants but that of occupancy and possession, as the stock in which the fee was to be engrafted; and where three brothers, on the death of their father, claimed a tract of land under a "substitution," or kind of entailment, by which the land belonged to the eldest son his life-time, and after his death to the second son his life-time, etc., the eldest son, under the claim set up by the brothers, being entitled to the occupancy or possession in his own right to the exclusion of his brothers, was also entitled to the fee-simple in his own right; and having presented his claim and procured its allowance, and obtained a patent for the land, there was not a resulting trust in favor of his brothers: *Chene v. Bank of Michigan*, W. 511.

52. A defaulting public officer made an absolute transfer of property to his sureties without written declaration of trust or defeasance, it being understood as securing the officer's liability and to enable the surety to provide for his own liability as such surety. Held, that under the statute of frauds no trust was made to result: *Spear v. Rood*, 51 M. 140.

53. The want of a consideration in a voluntary deed does not, in the absence of fraud or mistake, raise a resulting trust in favor of the grantor: *Jackson v. Cleveland*, 15 M. 94.

54. So held where husband and wife, being about to separate, in order to avoid questions of dower conveyed certain real estate to a third person by a deed in fee-simple, absolute in form and purporting to be for a valuable consideration: *Ibid*.

55. No trust arises by implication in favor of one who makes a voluntary conveyance of land or procures it to be made to another: *Palmer v. Sterling*, 41 M. 218.

56. A voluntary conveyance of land will not raise a resulting trust in favor of persons for whom the grantee agrees by parol to hold the property: *Shafter v. Huntington*, 53 M. 810.

57. Since the abolition of resulting trusts one who conveys land to his wife or any other relation is in no better position for treating the transfer as creating a trust than any one else would be; if he meant the transfer as a gift and not as a sale, no debt arises on the part of the transferee, and as against him the grantor can neither set off the value of the land nor sue for it: *Bulen v. Granger*, 56 M. 207.

58. Prior to R. S. 1846 (H. S. § 5569), if one bought land and paid for it, and had the conveyance made to another, there was in equity a resulting trust in favor of the party paying the purchase money, unless the purchase was

intended as a gift or advance to the person to whom the conveyance was made: *Maynard v. Hoskins*, 9 M. 485.

59. Although, prior to March 1, 1847, when said H. S. § 5569 took effect, trusts resulting from payment by one person and conveyance with his knowledge to another were not forbidden, such trusts are not in harmony with our land system, and are not to be extended beyond the line of authority: *Waterman v. Seeley*, 28 M. 77.

60. And in order to maintain such a trust there must have been an intention to create it: *Ibid*.

61. And payment of the whole consideration must have been made by the party seeking to raise the trust; actual payment, and that the money was his, had to be shown by the most convincing proof: *Ibid.*; *Wright v. King*, H. 12; *Bernard v. Bougard*, H. 180.

62. Though proof of such payment would usually, as between strangers, raise the presumption of the intention, a trust raised by parol might be rebutted by parol, and the presumption did not rise where the trust was taken in the name of wife or child, or where, even without legal relationship, the person paying the purchase money assumed to stand *in loco parentis* to the grantee, because it was both natural and legal to presume that in paying for land to be granted to a child so situated it was intended as a donation or advancement, and not as a trust in favor of the donor: *Waterman v. Seeley*, 28 M. 77.

63. Under the provisions of H. S. § 5569, no use or trust results or can be raised by parol in favor of one who, in the absence of mistake, fraud or deceit, furnishes the consideration for a conveyance which is made with his knowledge or consent to another; and the title vests in the person named as alienee in the conveyance: *Trask v. Green*, 9 M. 358; *Maynard v. Hoskins*, 9 M. 485; *Groesbeck v. Seeley*, 13 M. 329; *Newton v. Sly*, 15 M. 391; *Fisher v. Fobes*, 22 M. 454; *Taylor v. Boardman*, 24 M. 287, 304; *Harwood v. Underwood*, 28 M. 427; *Weare v. Linnell*, 29 M. 224; *Tyler v. Peatt*, 30 M. 63; *Hooker v. Axford*, 33 M. 453; *Brown v. Bronson*, 35 M. 415; *Palmer v. Sterling*, 41 M. 218; *Barber v. Milner*, 43 M. 248; *Maxfield v. Willey*, 46 M. 252; *Bumpus v. Bumpus*, 53 M. 346; *Pulford v. Morton*, 62 M. 25.

64. Where one purchases lands in another's name, no deceit or fraud having been practiced upon him, and no agreement with him violated by that order, he cannot establish rights thereto in himself in opposition to the apparent title: *Weare v. Linnell*, 29 M. 224.

65. Where property is conveyed by an ordinary deed without any condition or declaration of trust, and which declares the uses to be for the grantee's benefit, no trust can result to the grantor or his heirs: *Brown v. Bronson*, 35 M. 415.

66. A tax purchase by an agent in his own name but with his principal's money does not support a resulting trust in his principal's favor: *Maxfield v. Willey*, 46 M. 252.

67. Where property sold on execution has been redeemed by an outsider and quitclaimed by him to the wife of the original owner with her husband's consent, and a mortgage taken back for the whole consideration, the property would then belong to the wife, and no trust could result to the husband, nor would he have any right whatever in the property: *Taylor v. Boardman*, 24 M. 287.

68. Where a partner buys lands in his own name, but with partnership funds, though without any agreement to buy for the joint benefit, such a purchase will not support the theory of a resulting trust: *Russell v. Miller*, 26 M. 1.

69. No resulting trust arises where title to land is placed — under a parol undertaking as to how it shall be held — in one partner by consent of another who does nothing but make payments of small sums of money for which, if made with authority, he has a legal remedy: *Pulford v. Morton*, 62 M. 25.

70. But where one partner purchased property for the use of the firm but in his own name, though with the money of another partner, and the property is actually used as firm assets, the case does not fall within the principle of H. S. § 5569 prohibiting resulting trusts, but must be treated as partnership property: *Way v. Stebbins*, 47 M. 296.

71. The statute abolishing resulting trusts in cases where one person furnishes the consideration for a grant to another, and vesting the title in the alienee named in the conveyance, subject only to a trust in favor of creditors when they would otherwise be defrauded, applies only to cases where the conveyance was so made by consent of the person furnishing the consideration, and not to a case where the person taking the conveyance in his own name has done so in fraud of the rights of the person paying the consideration: *Fisher v. Fobes*, 22 M. 454.

72. An agent procured a conveyance, his principal furnishing the consideration; it was distinctly understood that the conveyance was to be for the principal's benefit, though it was not understood who was to be named as grantee. Held, that it was the agent's duty

either to have had the conveyance made directly to his principal or to have had a trust in his favor distinctly declared in the conveyance; failing in this he would be chargeable with constructive fraud, and his principal, on reading the deed, does not by silence waive his rights if he has not previously assented that the deed should be executed to the agent without securing himself, even where he has been allowed to take possession and appropriate the profits without accounting: *Ibid.*

73. The provision of H. S. § 5569, that no trust shall result in favor of the party furnishing the consideration for a purchase in the name of another, does not apply to a conveyance obtained by fraud: *Linsley v. Sinclair*, 24 M. 380.

See, as to the facts of this case, ATTORNEYS, § 52.

74. Where a husband, acting as his wife's agent, takes in his own name, without her knowledge, a deed of property intended to have been conveyed to her in compromise of a claim due to an estate upon which she is administratrix, he will in equity be held a trustee for the parties interested in the property: *Wales v. Neubould*, 9 M. 45.

75. It is a fraud upon the rights of a railway corporation if a director who buys lands for the use and benefit of the company, and pays for them with its funds, takes the title in his own name or jointly with others; and the nominal grantees would hold in trust for the company: *Michigan Air Line R. Co. v. Mel-len*, 44 M. 321.

76. The prohibition of resulting trusts does not apply where the conveyance is merely the quitclaim of an equity to the owner of the legal estate; this creates no title, but merely removes an encumbrance: *Munch v. Shabel*, 37 M. 166.

77. A debtor who purchases land, causing the vendor to convey to a third person so that creditors may be defrauded, acquires no interest, and no trust results to him. As against the grantee none but creditors can reach it; and they must proceed in chancery: *Trask v. Green*, 9 M. 358; *Maynard v. Hoskins*, 9 M. 485; *Harwood v. Underwood*, 28 M. 427; *Tyler v. Peatt*, 30 M. 63.

78. H. S. §§ 5569, 5570, sustaining trusts in land in favor of creditors where the debtor pays the entire consideration and the grant is made to another, covers a case where pending suit the judgment debtor completed his payments on a contract of purchase and fraudulently caused the land to be deeded to another without consideration: *Fairbairn v. Middlemiss*, 47 M. 372.

79. One to whom a debtor has conveyed his property to keep it beyond the reach of his creditors is held as trustee for their benefit, and will be liable for all the property in his hands when suit is brought against him: *Thayer v. Swift*, H. 490.

80. One who receives the goods of another and disposes of them with the knowledge that the latter is fraudulently seeking to save them from execution becomes in equity the latter's trustee, and is liable to his creditors to the amount of the goods transferred: *Reeg v. Burnham*, 55 M. 39.

81. The fact that one man furnishes another with means to start in business, whether for honest or dishonest purposes, does not give the former any legal title in the goods purchased for the business; nor does it render them subject to levy on an execution against him. Any trust resulting in favor of his creditors must be worked out in equity: *Kinter v. Pickard*, 67 M. 125.

4. Constructive trusts.

82. A case of constructive trust must rest on fraud, either actually intended or resulting from a failure to recognize and observe the rules of business integrity: *Pierce v. Pierce*, 55 M. 629.

83. Where an agent to sell lands purchased them of his principal, concealing important facts, so that the transaction amounted to a fraud upon the principal, a trust in the principal's favor is created by operation of law, and it is competent to prove by parol the facts that create the trust: *Moore v. Mandlebaum*, 8 M. 433.

84. A grantee obtaining a conveyance of land by fraud, mistake or undue advantage will be deemed to hold as trustee for the person equitably entitled: *Edwards v. Hulbert*, W. 54; *Adams v. Bradley*, 12 M. 346; *Campbell v. Campbell*, 21 M. 438; *Hanold v. Bacon*, 36 M. 1; *Davis v. Filer*, 40 M. 310; *Austin v. Dean*, 40 M. 386; *Crooks v. Whitford*, 40 M. 599.

85. Where a conveyance is obtained for fraudulent ends or under oppressive circumstances, the party deriving title is converted into a trustee, if necessary for administering relief: *Huxley v. Rice*, 40 M. 73.

86. The claimant of a pretended title which he had no right to retain or assert against another party is regarded in equity as holding in trust for the other party, and as bound to release it to him on just terms: *Crooks v. Whitford*, 40 M. 599.

87. A court of equity may in a proper case

adjudge the patentee of lands to hold as trustee for one having greater equities: *Boyce v. Danz*, 29 M. 146; *Hedley v. Leonard*, 35 M. 71.

88. A widow in possession of premises of which her husband died seized procured, without the payment of any new consideration, to be executed to herself a deed of the premises, in order to cure defects in the title under which her husband went into possession. The title thus acquired she will hold in trust for the heirs of her husband, subject to her dower right: *Campbell v. Campbell*, 21 M. 488.

89. Where the complainant's means have been invested in lands and a deed taken without her knowledge and in violation of her rights in the names of her step-children, her equity to demand a conveyance is not affected by the statute abolishing resulting trusts: *Ransom v. Ransom*, 31 M. 301.

90. An administrator with knowledge that his decedent held certain part-paid school lands in trust for third parties allowed such lands to be forfeited for non-payment of interest, and acquired a patent in his own name on the resale. Held, that chancery would compel him to convey to the real parties in interest: *Carrier v. Heather*, 63 M. 441.

91. If the vendee in a contract for the sale of non-patented government lands subsequently receives patents for other lands than his contract calls for, he holds the title to such lands in trust for his vendor: *Gibbs v. Diekma*, U. S. Book 26 (Co-op. ed.), 177.

92. A deed fraudulently procured by the false representation that it is for the protection of the grantee in a prior unrecorded deed from the same grantor does not invest the grantee named therein with any title as against the prior grantee for whose benefit the grantor meant it. The fraudulent grantee is a mere trustee for the other: *Hanold v. Bacon*, 36 M. 1.

93. One who by deception obtains an assignment of a certificate of purchase from one who has parted with the title, and tells him so, and who then obtains a patent on such certificate, becomes a trustee *mala fide* of the legal title for his assignor: *Loomis v. Roberts*, 57 M. 284.

94. Where by treaty between the United States and an Indian tribe a sum was set apart to pay claims against the Indians, to be allowed by commissioners, and A. having a claim against them, B. procured its allowance to himself as purchaser of the claim, when he had no right to it, and received the money, held, that as B. was not liable to A.

at law in an action for money had and received, he would in equity be considered as a trustee for him: *Edwards v. Hulbert*, W. 54.

95. One who goes into possession of lands under a contract-purchaser bound to pay taxes takes a tax-title in trust for the vendor: *Bertram v. Cook*, 32 M. 518.

96. One who buys up unredeemed property sold on execution, but is not bound by contract or by actual or constructive fraud to hold it for the debtor, does not become a trustee for the debtor's benefit, even where he gives out that he has benevolent designs in the debtor's favor: *Taylor v. Boardman*, 24 M. 287.

97. K. sold to H. a parcel out of a lot which he had mortgaged and then allowed the mortgage to be foreclosed upon the whole lot, and by a collusive arrangement with R. in his own interest, but in fraud of H.'s rights, the lot was bid in by R., who then refused to release to H. except upon terms. Held, that R. should be considered as holding H.'s parcel as trustee for H.'s benefit, and, so far as H. was concerned, as K.'s mortgagee: *Huxley v. Rice*, 40 M. 73.

98. Collusive purchasers under unfair foreclosure of chattel mortgage were held accountable as trustees in their own wrong: *Culbertson v. Young*, 50 M. 190.

99. In a particular case, a wife who took securities in her own name was held to have made herself a trustee for the benefit of her husband and his creditors of all the fund except so much as represented her own land: *Cicotte v. Stebbins*, 49 M. 631.

100. Where money to take up a mortgage is paid by a vendor to a vendee protected by covenants against encumbrances, a trust to satisfy the encumbrance arises in favor of subsequent purchasers under like covenants from the vendee, and they having redeemed from such mortgage may hold such vendee as for money received to their use: *Twitchell v. Drury*, 25 M. 398.

101. The vendor in a contract of sale of lands is deemed in equity to be a trustee of the land for the purchaser, who is regarded as a trustee of the purchase money for the vendor: *Wing v. McDowell*, W. 175; *Michigan State Bank v. Hastings*, 1 D. 225.

102. In the absence of a formal assignment to a lessor of insurance taken by the lessee, it was held that equity would deem the insurance to be held in trust for the former to the amount stipulated by the latter: *Eberts v. Fisher*, 54 M. 294.

(c) *Validity.*

1. In general.

103. The land-board in Detroit had power to grant a donation lot by conveyance in trust: *Ready v. Kearsley*, 14 M. 215.

104. H. S. § 5578, authorizing trusts to be created to sell lands for the benefit of creditors, is not confined to general assignments: *State Bank v. Chapelle*, 40 M. 447.

105. A husband may settle property to his wife's use through trustees: *Burdeno v. Amperse*, 14 M. 91.

106. A trust imposed by will for raising money out of the rents and profits to pay off encumbrances on an estate devised to minors is valid, and the trustee can be relieved from it only by the action of all the beneficiaries after they become of age; the charge cannot be apportioned by undivided shares: *Toms v. Williams*, 41 M. 552.

107. A bequest to a village of \$15,000 to be used in the erection of a school building to be used as a high school, and to be suitable for that purpose, is not void for uncertainty or indefiniteness. If power is lacking to administer the trust it can be granted by the legislature: *Hatheway v. Sackett*, 33 M. 97.

108. A bequest to a school-district board and its successors of a fund to be held in trust for purchasing with the interest thereof books for a school library was sustained: *Maynard v. Woodard*, 86 M. 423.

109. Where personal property was put in the hands of a third person to be delivered to the donor's daughter after his death, it was held that the duties of the trustee were definite and might rest in parol: *Bostwick v. Mahaffy*, 48 M. 342.

110. Trusts in personal property, where the specific property is constantly changing while the fund remains subject to the duties and burdens of the trust, are not invalid or uncommon: *Leland v. Colver*, 34 M. 418.

2. Perpetuities; accumulations.

See, also, WILLS, VIII, (c).

111. Estates in trust are subject to H. S. § 5581, prohibiting the suspension of the absolute power of alienation for a longer time than two lives in being (H. S. § 5573): *Thatcher v. St. Andrew's Church*, 37 M. 264; *Newark Methodist Church v. Clark*, 41 M. 730.

112. Therefore a trust-deed suspending the power of alienation for a longer time than two lives in being would be invalid. But such power is not suspended where the

trustees are vested with the power of sale at their option; if this power is exercised it puts an end to the trust: *Thatcher v. St. Andrew's Church*, 37 M. 264.

113. A perpetual trust for a particular purpose, with no power of alienation in the trustee, is invalid; and trusts for charitable uses are not distinguished in this state from others, and their validity depends on the same rules: *Newark Methodist Church v. Clark*, 41 M. 730.

114. Such trusts as may be necessary to save estates from being sacrificed to pay encumbrances and preserve land as such for devisees do not contravene the statute against perpetuities: *Toms v. Williams*, 41 M. 552.

(d) *Construction.*

115. A deed of trust is to be so construed as to enable the trustee to perform the duties entrusted to him: *Smith v. Bonhoof*, 2 M.

115. Deed to Roman Catholic bishop in trust for erection of church, etc., for use of a particular congregation, construed: *Ibid*.

116. Where a trust-deed contemplated conversion of the property from realty to personality, proceeds to go to "legal heirs," the term is construed by the general statute of descents (H. S. § 5772a, subd. 2), not by H. S. § 5776a, confining descent to ancestor's blood: *Henderson v. Sherman*, 47 M. 267.

117. A deed by the land-board in Detroit of a lot of land to "S. or his legal heirs and representatives, but always in trust and for the use and benefit of the rightful owners of the premises hereinafter mentioned, claiming the same by virtue of the meane conveyances from the original grantee or otherwise howsoever, his, her or their heirs," etc., was held not to vest in S. any power of selection as to the beneficiaries under it; nor was it ambiguous as to the grantee or uncertain as to the *cestuis que trustent*: *Ready v. Kearsley*, 14 M. 215.

118. A deed conveyed certain lands to trustees named in it, and also "all my household goods and personal property," etc., . . . "to have, hold, use and enjoy the same, and lease or dispose of the same, or cause the same to be used, and to receive the rents, profits and income thereof, and to use or dispose of the same on trust," etc., and gave them authority in certain emergencies to temporarily raise money upon the property by mortgage or otherwise. Held, that the power of alienation here given was meant to cover the real as well as the personal property, some of the words being apt if applied to the real estate, and not

so if applied to the personalty: *Thatcher v. St. Andrew's Church*, 87 M. 264.

119. If apt words are used, no particular form is needed for the creation of a power of alienation in a deed of trust: *Ibid*.

120. A particular trust-deed construed and held to dispose entirely and absolutely of the entire beneficial interest in the estate: *Faton v. Langley*, 50 M. 488.

121. A will provided funds "for the establishment of a school at Montrose for the education of children, to be expended according to the direction of [the] executors." Held, that the term "establishment of a school" in a bequest for such a purpose may mean the employment of a teacher, or the organization of an institution, or the erection of a building, or part or all of these things; and it does not bind the executors to any particular scheme, nor preclude them from erecting a school of an exclusive character, in no just sense public nor to be recognized as a charity, and so furnishes no basis for state interference to enforce the bequest as for a public charity: *Attorney-General v. Soule*, 28 M. 153.

Certain wills held to confer upon executors general power in trust to sell lands without probate license: See ESTATES OF DECEDENTS, §§ 272-274.

II. TRUSTEES.

Notice to one trustee is notice to all: See NOTICE, § 33.

(a) Appointment and acceptance.

122. H. S. § 5589, in authorizing the court of chancery to appoint some person to complete the execution of a trust when the original trustee has died, resigned or been removed, does not apply to trusts in personalty but only to those in real estate: *Ledyard's Appeal*, 51 M. 628.

123. A trustee can be appointed by a court of equity to take the place of one who has died without completing the execution of his trust, or has become incapable of acting. And in proper proceedings instituted in behalf of the trustee or of any one interested in the trust fund, and begun by bill of complaint, with actual or substituted notice to all parties concerned, the court will furnish such aid as from time to time may be needed in the administration of the trust. But these proceedings cannot be taken by petition: *Ibid*.

124. A trust need not fail for want of express acceptance by the trustee: *Thatcher v. St. Andrew's Church*, 87 M. 264.

125. A trust is sufficiently accepted by proceeding to execute it: *Lyle v. Burke*, 40 M. 490.

Appointment as trustee revoked by codicil, see WILLS, § 285.

(b) Resignation and removal.

Abandonment of trust, see *infra*, §§ 228, 229.

126. A bill asking that a trustee be superseded for incompetency must clearly set forth the substantial facts that show him to be unfit: *Preston v. Wilcox*, 38 M. 578.

127. The imprudence or neglect of a trustee are generally grounds for requiring him to make good the injury resulting from it rather than for superseding him: *Ibid*.

128. A trustee's failure, through mistake, to discharge a duty, or injudicious exercise of discretion or refusal to exercise a purely discretionary power for the advantage of the estate, will not warrant his removal: *Ibid*.

129. A trustee requiring particular qualifications, chosen by the author of the trust and unequivocally accepted by the bulk of the beneficiaries, will not be superseded unless on grounds of the clearest necessity, such as that by reason of his general unfitness his retention will be likely to disappoint the fundamental purposes of the trust: *Ibid*.

130. A trustee's insolvency may be ground for superseding him: *Brown v. Vandermeulen*, 41 M. 418.

(c) Extent and duration of trustee's estate.

131. In a conveyance of land in trust for the payment of debts the word "heirs" is not necessary to convey a fee: *Angell v. Rosenberg*, 12 M. 266.

132. Where trustees designated by a will for any beneficial trust purpose are not required to hold any estate beyond one for a term of years, they take no greater absolute estate than is co-extensive with the trust; and as to so much of the estate as is not needed to carry out a valid trust, their authority is no more than a power and does not prevent a devolution of the estate (H. S. §§ 5576; 5577): *Toms v. Williams*, 41 M. 552.

133. A declaration of trust operates to assign to the trustee the notes from which the trust fund is to be raised, even if not indorsed to him: *Lyle v. Burke*, 40 M. 499.

134. A deed of lands to trustees to secure or pay debts is a mortgage: *State Bank v. Chapelle*, 40 M. 447; *Flint & P. M. R. Co. v. Auditor-General*, 41 M. 635.

(d) *Powers and rights.*

As to powers in trust by will to executors to sell lands, see ESTATES OF DECEDENTS, §§ 272-274.

135. A discretion confided to trustees jointly cannot be independently exercised by one of them so as to ignore another, even with the consent of others who, with him, would constitute a majority: *Loud v. Winchester*, 52 M. 174.

136. As a general rule, where several persons are appointed to execute a trust and no authority is given to a less number than the whole to act, all must join in its execution: *Scott v. Detroit Young Men's Society*, 1 D. 119.

137. But a public trust may be executed by a majority, all being present to deliberate: *Ibid.*

As to a sale by one of two executors where the other has renounced the trust, see ESTATES OF DECEDENTS, § 266.

138. A trustee may maintain *assumpsit* for money had and received for rent of *cestui que trust* collected and in the hands of his agent: *Beardslee v. Horton*, 8 M. 560.

139. Where a number of creditors select an individual to represent them as trustee in a mortgage, it is not to be presumed that the trustee has power, or that a majority of the beneficiaries can authorize him, to buy in the mortgaged property on foreclosure so as to bind those who are unwilling to assent to the arrangement; in consenting to the security, no creditor surrenders any right of individual action. Where such a trustee in fact bought in the property in good faith, the court allowed him to elect to pay those creditors who afterwards opposed the sale their proportionate share of the bid, or to re-open the sale: *Bradley v. Tyson*, 38 M. 337.

140. A trustee cannot be allowed to make any advantage to himself from an abuse of his trust: *Chene v. Bank of Michigan*, W. 511.

141. Administrators or other persons in the position of trustees may not directly or indirectly acquire interests in or bargain for benefits from the property which, in their relation as trustees, they hold, manage, control or sell for others; it is a fraud for a trustee to take for his own benefit a position in which his interests will conflict with his duty: *Sheldon v. Rice*, 30 M. 296.

142. One who places himself in the position of confidential adviser of a person who seeks his aid to escape from threatened criminal proceedings, and to settle charges brought against him, is a trustee, and has the burden

of showing good faith in any bargains or transfers which he may meanwhile make with the person who thus relies upon his advice: *Storrs v. Scougal*, 48 M. 887.

143. A trustee is not allowed to deal with his *cestui que trust* as with a third person; and purchases of trust property made by him will not be sustained, unless the court is satisfied that he has acted throughout with the most perfect fairness, and taken no advantage of his peculiar relation: *Schwarz v. Wendell*, W. 287.

144. Under the facts appearing in this case the court set aside a purchase made by the *cestui que trust* of the trustee, and ordered the latter to deliver up to be cancelled a note given for the purchase price, or to account for the amount: *Ibid.*

145. A trustee cannot be a purchaser of the trust estate: *McKay v. Williams*, 67 M. 547.

146. A trustee to sell cannot himself become purchaser: *Dwight v. Blackmar*, 2 M. 330.

147. A sale made by a trustee to himself is void in law: *Clute v. Barron*, 2 M. 192.

148. No one without express authority of law can become purchaser of property which it is his duty to sell for the highest price he can obtain: *Ames v. Port Huron, etc. Co.*, 11 M. 139.

149. When property is sold by a trustee and purchased by or for him on his private account, the purchase is void at the option of the *cestui que trust*, but he affirms it by acquiescence for an unreasonable length of time: *Campau v. Van Dyke*, 15 M. 371.

150. A trustee to whom certain mortgage securities had been assigned made a declaration of trust to a certain bank, setting forth that he held them primarily to secure the indebtedness of the *cestui que trust* to the bank. Held, that this did not of itself preclude the bank from purchasing other claims against the *cestui que trust*, whether secured upon the same property or not: *Detroit Savings Bank v. Truesdail*, 38 M. 430.

151. Where money is left to a village to build a suitable building to be used for a high school, without further directions as to its maintenance, and without endowment, the village may use its reasonable discretion on the subject, and may put it on the basis of the public schools. Such a building may be lawfully used in connection with the preparatory grades; and chancery cannot control the discretion of the local authorities in expediting the completion of the scheme and raising money for its support at public expense other-

wise than may be provided by law when no private funds are given to the trust for that purpose: *Hathaway v. New Baltimore*, 48 M. 251.

(e) *Duties and liabilities.*

152. Strict performance of trust duties may be waived; but such waiver in the past and in the case of completed transactions will not justify or excuse subsequent laxity that has not been authorized or approved: *Loud v. Winchester*, 52 M. 174.

153. Trustees should not assume extraordinary risks or engage in dealings that depend on so many contingencies as to be unsafe, though it may be possible to work out a favorable issue from them: *Loud v. Winchester*, 64 M. 23.

154. A trustee must not use the trust to accommodate other parties, or to enter upon an extended course of bill-discounting and indorsing with customers, thus risking the funds of the trust estate: *Ibid.*

155. Trustees who hold property in trust to carry on a salt-making and lumber business in a particular place are not authorized to enter into an agreement with a company in another state to sell them unlimited amounts of lumber on time, thus putting a large part of the trust property in another jurisdiction at a serious risk: *Ibid.*

156. Pursuing a trust fund in the hands of a misconducting trustee cannot be construed as a waiver of his deficiencies: *Ibid.*

157. Whether goods are converted into money or not makes no difference with the trustees' responsibility to creditors whose right to the goods or proceeds are established; and if the proceeds are paid away by the trustees *pendente lite* they are responsible: *Thayer v. Swift*, H. 430.

158. On the foreclosure of a purchase-money mortgage given by a trustee (see *infra*, § 178), a personal decree against him was held proper: *Hannah v. Carnahan*, 65 M. 601.

159. Where a creditor had caused an arrangement to be made whereby his debtor's property was conveyed to a trustee to sell and with the proceeds pay encumbrances, and where such creditor had taken from said trustee a mortgage to secure performance of his trust, foreclosure of the mortgage was denied, the trustee not having abused his trust or been negligent, and having been unable to obtain means from the property in his charge: *Humphrey v. Beckwith*, 48 M. 151.

160. Defendants in a bill for an accounting brought by the assignee of an interest under a

deed of trust are not concerned whether or not complainant paid anything or not for the assigned interest: *Henderson v. Sherman*, 47 M. 267.

161. A double responsibility rests upon a trustee in dealing with one whom he knows to be also a trustee, as any dealings between them in wrong of the latter's trust affects both with an equitable responsibility: *Heath v. Waters*, 40 M. 457.

(f) *Accounts; compensation.*

162. A trustee is not chargeable with a loss resulting from the renewal, through no fault of his, of an overdue note without renewing the security: *Loud v. Winchester*, 64 M. 23.

163. A trustee is to be credited with money advanced to settle claims against the trust estate, when such settlement was within the reasonable judgment of business men: *Ibid.*

164. Losses incurred through unauthorized dealings with the trust property are chargeable on the trustees where the beneficiary's consent is not shown; and the fact that such beneficiary took the property saved from such dealings does not present a case of election which prevents him from charging the losses to the trustees: *Ibid.*

165. A trustee is not chargeable with losses occurring on a sale of goods to a person whose responsibility he had no reason to doubt, and whose credit was good at the time of the sale: *Ibid.*

166. A trustee who has received the proper discount rates cannot charge for financial assistance rendered in discounting paper: *Ibid.*

167. Trustees must not receive from their employment personal benefits that are not provided for in the trust; as, *e. g.*, by receiving special compensation for supervising transactions connected with the business confided to them, but unauthorized by the trust: *Loud v. Winchester*, 52 M. 174.

168. A trustee is entitled to a reasonable compensation for his time and services: *Schwarz v. Wendell*, W. 267.

169. A trustee is not entitled as of right to compensation, but on accounting it is within the discretion of a court of equity to make or withhold allowances as the case requires. It may properly be withheld if his services are merely constructive, and if his non-feasance has involved the estate in litigation: *Henderson v. Sherman*, 47 M. 267.

170. A trustee who acts in good faith and with reasonable diligence should be compensated: *Barnebee v. Beckley*, 43 M. 613.

(g) *Investments.*

See, also, ESTATES OF DECEDENTS, § 91; GUARDIANSHIP, §§ 82, 83, 90.

171. A trustee whose wrongful act in investing moneys has been repudiated by the *cestuis que trustent* cannot claim subrogation to their equities and have the trust enforced for his own benefit to the same extent that they could have had it enforced had they not repudiated his action: *Rowley v. Towsley*, 53 M. 329.

(h) *Sales and mortgages.*

As to power of executors under trust imposed by will to sell, see ESTATES OF DECEDENTS, §§ 266, 372-274.

As to purchases by trustee of the trust property, see *supra*, §§ 143-149.

172. No statute or common-law principle requires trustees who have an express and unqualified power to sell "in such manner as they may deem for the best interest" of the trust committed to them to sell by public auction only, or to first offer the property at public auction; so held of the board of escheats: *Crane v. Reeder*, 22 M. 322.

173. An agreement whereby property owned in common is put in the name of one of the owners to be held by him as trustee for the benefit of all parties, "subject to such decisions as the parties may direct from time to time," gives him no right to sell the whole without the consent of all the owners; and if he sells to a purchaser with notice the sale can convey no more than his own personal interest: *Palmer v. Williams*, 24 M. 323.

174. Where the trustee of lands is authorized to sell on specified terms he cannot sell except in compliance with his instructions, and cannot give credit where he is told to sell for cash: *Ibid.*

175. Consent that a trustee of lands may sell at a given rate at one time does not, when that sale falls through, operate as a continuing power to sell at a future time, especially where the value of the property fluctuates; after any considerable interval new authority is required, even though the price obtained may be larger than that previously consented to: *Ibid.*

176. A trust is forever ended upon the execution and delivery by the trustees of a conveyance under the absolute power of alienation; and such conveyance passes a good title to the grantee: *Thatcher v. St. Andrew's Church*, 37 M. 264.

177. Where one conveyed land in trust,

and the trustees, with his knowledge and by virtue of the stipulations of the trust, to which certain events had given effect, deeded to a third person, and the first owner thereon relinquished possession on being required to, and never reclaimed it, but disposed of his property as if he did not consider this land as belonging to him, his title was regarded as extinguished: *Thayer v. Arnold*, 82 M. 336.

178. A wife's deed of land to her husband, in trust for their minor children, authorized him to sell and convey the property as he should deem best, and to re-invest the proceeds for said children; the deed was not to become operative or to be placed on record during the grantor's life, and if her husband survived her he was "to control and govern such property the same as if he held the same in fee-simple, without let, hindrance or bond to any person or persons." After her death he put the deed on record and sold the land for \$1,700, and bought other land for \$1,600, paying half down and giving a purchase-money mortgage for the rest. Subsequently he borrowed \$600 from the same mortgagee, and gave a second mortgage on the same property. Held, that the purchase was valid because the price did not exceed the proceeds of the sale of the land conveyed in the trust deed, and that the purchase-money mortgage could be enforced, as it was given for the purposes of an investment that was warranted by the trust; but that as the trust deed — of which the record was notice — gave no power to mortgage property purchased, the second mortgage was void: *Hannah v. Carnahan*, 66 M. 601.

III. CESTUIS QUE TRUSTENT.

(a) *Nature and extent of their estate.*

179. A naked trust previously existing became an executed trust, and consequently a legal estate in the *cestui que trust*, by the operation of H. S. § 5565, which took effect March 1, 1847: *Ready v. Kearsley*, 14 M. 215.

180. By H. S. § 5565 the principle of the English statute of uses is adopted. That statute never operated upon mere resulting or implied trusts, but only on express trusts actually created by the parties; nor does said § 5565: *Trask v. Green*, 9 M. 358.

181. Passive trusts are now abolished, and when a deed creates them the title passes at once to the beneficiary: *Burdeno v. Amperae*, 14 M. 91.

182. In every case of naked trust the statute itself executes the trust and places the

legal estate in the *cestui que trust*: *Thompson v. Waters*, 25 M. 214, 234.

183. It has converted all plenary rights to the use and control of lands into legal estates, and applies to existing as well as future trusts: *Stevens v. Earles*, 25 M. 40.

184. A trust requiring the trustee to manage property and pay rents and profits to the beneficiary unless the latter elects to live on it is an active trust, so long as the beneficiary is out of possession; and whenever that is the case it does not therefore vest a legal estate in the beneficiary under H. S. § 5565; and a mere beneficiary for life cannot, by deeding it, give title to more than an equitable life-interest, if to that: *Parker v. McMillan*, 55 M. 265.

185. Land was conveyed in trust for the grantor's wife for her life, then for her children until they should become of age, when the trustee was to convey to them: The wife survived the children. *Held*, that on her death the grantor's heirs at law took the property, and that a conveyance by the wife could not affect their interest: *Ibid*.

186. H. S. § 5567, enacting that every "disposition of lands" shall be directly to the person beneficially interested, and that a deed in trust shall not vest the legal estate in the trustee, does not apply where the interest of the *cestui que trust* was not created by the deed to the trustee, but by the original contract of purchase in connection with certain contemporaneous correspondence. In such case the *cestui que trust* takes merely an equitable title: *Loring v. Palmer*, 118 U. S. 321.

187. Where a trust under a will clearly designates the interests to be enjoyed and the persons who are to enjoy them, the expiration of the purposes of the trust gives such a legal character to these interests that no conveyance from the trustees is necessary to pass them: *Toms v. Williams*, 41 M. 552.

That property held in trust is not liable to execution, see *EXECUTIONS*, §§ 36-38.

(b) *Rights, powers, etc.*

188. Lands held in parol trust by a father for his daughter were exchanged for others, which he conveyed to his brother on like trust. Creditors of the father sought to reach it. *Held*, that the equities of the daughter were equal to those of the creditors, and she would be protected as against their claims: *Patton v. Chamberlain*, 44 M. 5.

189. A. devised land to B. in trust for her nieces C. and D. D., while yet a minor, conveyed her interest to C. Before the trust was closed the trustee represented to C. and D.

that it was necessary to raise money by mortgage to pay off the claims of certain heirs, whereupon he executed a mortgage of the trust estate, D. and the trustee signing as witnesses. A purchaser on foreclosure of the mortgage by advertisement filed a bill against B., C. and D. to have the mortgage declared an equitable one, his purchase an assignment, and for a decree for deficiency. *Held*, that the mortgage was void as to all parties under H. S. §§ 5578, 5583, and that D.'s signing as a witness and her assuming the mortgage in a subsequent deed from C. did not ratify the void mortgage as to her: *Weaver v. Van Akin*, 71 M. — (June 22, '88).

189a. A release by *cestuis que trustent* of a mortgage was held good in equity: *McBride v. Wright*, 46 M. 265.

190. Beneficiaries are entitled to be kept informed at all times by the trustees as to the management of the trust: *Loud v. Winchester*, 52 M. 174.

191. An insolvent debtor conveyed his property to a creditor, who in turn conveyed it in trust to be managed solely for his benefit, but to be reconveyed to the debtor after the trust should be executed. *Held*, that the debtor's position was that of a *cestui que trust*, who could demand an account, an enforcement of the trust, etc.: *Ibid*.

192. Where a party creating a trust to sell realty and personalty and apply the proceeds to pay debts, the residue to be given to persons named, has entered into partnership with the trustee and dealt with the trust funds as partnership assets, whereby losses have accrued, he cannot thereafter come in as *cestui que trust* and call the residuary beneficiaries to an account for the balance of the fund turned over to them by the trustee: *Wilkins v. Fitzhugh*, 48 M. 78.

193. The fact that a creditor has given liberal accommodations to his debtor, and has reduced the amount of his claim, does not relieve such creditors from the duty of doing business on business principles in connection with trustees of the debtor's property, held in trust to pay the debt: *Loud v. Winchester*, 64 M. 23.

194. Where a trustee acts in good faith, whatever binds him in any legal proceedings begun and carried on by him to enforce the trust, to which the *cestuis que trust* are not actual parties, binds them; and whatever forecloses the trustee, in the absence of fraud or bad faith, forecloses them: *Richter v. Jerome*, 123 U. S. 233.

195. Where A. and B. provided by contract for a transfer from A. to a trustee

named, in trust for B., the expenses of the trustee in executing the trust belong to B. to pay, and no part of them is chargeable to A.; the trustee was trustee for B., and not for the parties jointly: *Grant v. Merchants', etc. Bank*, 35 M. 515.

IV. SUITS RESPECTING TRUST PROPERTY; ENFORCEMENT OF TRUSTS; PURSU- ING TRUST FUNDS.

(a) *In general.*

196. Courts of equity have control over matters of trust: *Forrest v. O'Donnell*, 42 M. 556.

197. Equity will interfere to enforce the proper administration of a trust and to prevent the grantor's intent from being defeated: *Smith v. Bonhoof*, 2 M. 115.

198. Equity takes cognizance of frauds discovered in the action of trustees whenever it can afford relief, provided its aid is invoked seasonably; and it has jurisdiction to enjoin the fraudulent execution of the trust and to give damages: *Morrison v. Mayer*, 68 M. 238.

199. The right to an accounting in equity is incident to most trust relations: *Cochrane v. Adams*, 50 M. 16; *Clarke v. Pierce*, 52 M. 157; *Darrah v. Boyce*, 62 M. 480.

200. Any accounting in respect to a trust that can present questions of losses caused by the trustee's negligence must be had in chancery: *Rodman v. Nathan*, 45 M. 607.

201. In a foreclosure suit brought by a trustee to render the fund available, the protection and administration of the trust are outside of the issue; and defendant owning the equity of redemption cannot resist foreclosure on the ground that the interests of the *cestui que trust* are in danger, nor can he have the fund enjoined from passing into complainant's control: *Nugent v. Nugent*, 50 M. 377.

202. If one who has a mere naked legal right, coupled with no equity, accepts a conveyance charged with a trust in favor of the party who has become vested with an equity, chancery will compel him to execute the trust: *Ready v. Kearsley*, 14 M. 215.

203. A bill to establish a trust in lands wrongfully patented was maintained with costs of both courts against the patentee and defendants claiming under him with notice, but dismissed as to purchasers in good faith with costs to them: *Austin v. Dean*, 40 M. 386.

204. The state will not interfere through its law officers to enforce the execution of a trust unless a public right or interest is in-

involved: *Attorney-General v. Soule*, 28 M. 153.

205. The legislature and not the courts must act as *parens patriae* in giving completeness and direction to imperfect charities; and a valid discretion vested in a municipal corporation by statute is beyond judicial interference: *Halshaw v. New Baltimore*, 48 M. 252.

206. A grant of land was made by the state to an educational corporation, and by the grant it was provided that the proceeds should be devoted exclusively to the erection of buildings for its use, a bond being given by individuals to the state to secure the performance of this provision. By consolidation with another corporation the donee secured all the buildings it needed, and afterwards appropriated the proceeds of the lands to its general needs. The sureties in the bond to the state then filed a bill to restrain the misappropriation. Held, that the bill should not be sustained: *Kiefer v. German American Seminary*, 46 M. 636.

207. Where the delay on the part of a *cestui que trust* in asserting his equitable title arose from his trustee's faults and misstatements, held, that the trust was not abrogated by abandonment or laches: *Loring v. Palmer*, 118 U. S. 321.

As to laches and lapse of time in enforcing trust or complaining of breach, see EQUITY, §§ 554, 556, 558, 570, 578a, 579, 599, 600.

208. Equity may pursue a trust fund, so long as it can be identified, into the property wherein it has become invested; and this pursuit may extend beyond the original wrongdoer, and may reach persons taking with notice; they stand, in many cases, in the same position with him: *Leland v. Collier*, 34 M. 419.

209. When a trust fund is misapplied by the trustee, the *cestuis que trustent* may pursue it if they are able to trace and identify it; and no more than substantial proof of identity is required: *Pierce v. Holzer*, 65 M. 263.

210. A depository who has received from a trustee a fund belonging in part to the beneficiary cannot appropriate it by his sole act to his own debt held against the trustee so as to bar the real owner from pursuing it against the fund: *Burnett v. First National Bank*, 38 M. 630.

211. Where a trustee has deposited a trust fund with his general account, and then gives to a third person a check for the whole deposit, the identity of the fund is lost, and the *cestui que trust* cannot maintain *assumpsit* against a third person to recover it: *Neely v. Rood*, 54 M. 134.

(b) *Parties; pleadings.*

212. The right of action for interference with the trust estate is in the trustee and not in the beneficiary: *Forrest v. O'Donnell*, 42 M. 556.

213. The beneficiary is not permitted to sue at law in his own name: *Ibid.*

214. The trustees holding the legal title of a cemetery are the proper and only persons to bring ejectment for it against a municipal corporation assuming control adversely to them: *Board of Health v. East Saginaw*, 45 M. 257.

215. Land devised to an infant was left in the possession of a trustee, who was not to surrender it to the devisee until the latter should become of age, and show sufficient capacity to be entrusted with it. The trustee was entitled to possession. H. S. § 5565. *Held*, that the devisee, on reaching majority, could not bring ejectment against a third person until the trustee had either surrendered the possession or transferred the right thereto by an instrument in writing; the trustee's acquiescence in the suit is not enough: *Atwood v. Frost*, 57 M. 229.

216. Where trustees sue for the benefit of *cestuis que trustent* the latter are the substantial parties to the litigation: *Bachelder v. Brown*, 47 M. 366.

217. One who has conveyed lands in trust to be conveyed as a gift to a person named, but whose grantee has deeded to another, may proceed in equity to compel the execution of the trust: *Abbott v. Gregory*, 39 M. 68.

218. In a case where the discharge of a mortgage or permission to redeem was sought, and it appeared that under an agreement attaching to the mortgage and binding complainant the mortgagees held in trust for a third person, such third person was *held* to be a necessary party; and it was further *held* that an accounting should be had if necessary to adjust his claims: *Glass v. Glass*, 50 M. 289.

Further as to parties in suits to enforce trust or relating to trust property, see EQUITY, §§ 634-636, 662, 663.

Sufficient allegation of trust and breach, see EQUITY, § 836.

Averments in bills for accounting, see EQUITY, §§ 837, 838.

(c) *Practice; evidence.*

219. Trusts belong to the jurisdiction of equity; and the remedies connected therewith are so identified with the procedure that no departure from the general practice can be

had unless permitted by statute or by rule of court: *Ledyard's Appeal*, 51 M. 623.

220. Injunction and receivership denied in suit against trustees where there was no allegation that they were insolvent, transient or irresponsible, or that fund was in a hazardous condition: *Thayer v. Swift*, H. 430.

221. Under a bill for an accounting by trustees any testimony that throws light on their management of the trust bears directly on the performance of their duty to keep the beneficiaries informed; and proof of misconduct and misappropriation by them is admissible whether anticipated and charged in the bill or not: *Loud v. Winchester*, 52 M. 174, 64 M. 23.

222. A wife, being desirous of devising her property so that her husband should have the benefit of it free from his creditors' demands, consulted an attorney, and at his suggestion devised the property in absolute terms to the attorney and another on an oral understanding that they should hold the same for the husband's use. The facts being undisputed, and the attorney admitting the whole case and signifying his readiness to perform on his part, the trust was enforced in equity against the other devisee: *Hooker v. Axford*, 33 M. 453.

V. DISCHARGE OR TERMINATION OF TRUSTS; REVOCATION.

223. Every trust in land ceases as soon as the purposes cease for which it was created: *Montgomery v. Merrill*, 18 M. 388.

224. A trust is not terminated until its purpose is fulfilled; and it is not revoked by the maker's death so long as a beneficiary remains: *Lyle v. Burke*, 40 M. 499.

225. Property granted in trust does not revert to the grantor until the *cestui que trust* or beneficial object of the grant ceases to exist in contemplation of law: *Regents v. Detroit Board of Education*, 4 M. 213.

226. Where A. had conveyed his farm in trust for his creditors, the conveyance being rather an encumbrance or security for debts than an absolute conveyance, it was *held* that when the purposes of the trust were satisfied the lands remaining would belong in equity to A. or his heirs, and if after A.'s death the grantee quitclaimed to A.'s heirs the latter would become vested with the legal title also: *Detroit v. Detroit & M. R. Co.*, 23 M. 173.

227. The interest remaining in property after an express trust has been satisfied is a legal estate and requires no reconveyance where there has been no change in the prop-

erty or the title held in trust: *Steevens v. Earles*, 25 M. 40.

And see *BANKRUPTCY*, § 60.

228. The trustee in a deed of trust cannot divest himself of the trust by simply withdrawing from it with the assent of the grantor, even though the latter is a beneficiary, if there are other beneficiaries who do not consent, or being infants cannot: *Henderson v. Sherman*, 47 M. 287.

229. An abandonment of a trust by the trustee and a surrender of the fund to the grantor constitute a breach of the trust and involve both in liability: *Ibid.*

UNIVERSITY OF MICHIGAN.

1. The history of the legislation relating to the university reviewed: *Regents v. Detroit Board of Education*, 4 M. 218.

2. The present university under the corporate title of "The Regents of the University of Michigan" is the same legal body with the university founded in 1817 and re-organized in 1831; so that grants made to the earlier corporation vest without further action in its successor: *Ibid.*

3. The conveyance by the governor and judges of Michigan territory of certain lands in Detroit to the trustees of the university of Michigan held valid: *Ibid.*

4. The regents have power to take, hold and convey real estate for any purpose tending to promote the interests of the university, to increase its funds, or otherwise to further the great public objects for which the corporation was created: *Regents v. Detroit Young Men's Society*, 12 M. 138.

5. Suit by the regents to recover the purchase-price of lands sold by them. The declaration averred their ownership, but did not show the nature of their title, nor how acquired, and it was demurred to on the ground that the regents had no power to make sale of lands without special legislative authority. *Held*, that as it was legally possible for the regents, in some modes and for some purposes, to be vested with the title to lands with the power to convey the same, judgment on the demurrer must be for plaintiff: *Ibid.*

6. As to the power of the regents to establish schools elsewhere than at Ann Arbor, see *People v. Auditor-General*, 17 M. 161.

7. The financial and other interests of the university are entrusted to the judgment and discretion of the regents. It is a sufficient answer to an application for a *mandamus* to show cause why they do not fill a professor-

ship established by law that the appointment being likely to interfere with the harmony of the institution, and being one requiring great care and deliberation in making, they had commenced and were still making the investigations necessary to enable them to make a proper appointment; especially where there appeared to be no unnecessary delay or want of good faith in their proceedings: *People v. Regents*, 4 M. 98.

8. An act of the legislature appropriated to the regents of the university the proceeds of a certain tax, "Provided that the regents shall carry into effect the law which provides that there shall always be at least one professor of homeopathy in the department of medicine, and appoint said professor at the same salary as the other professors in this department." The regents adopted certain resolutions "that there be organized in the department of medicine a school to be called the Michigan School of Homeopathy, to be located at such place (suitable in the opinion of the board of regents), other than Ann Arbor, as shall pledge to the board of regents by June 20th next the greatest amount for buildings and endowment of said school," and appropriating \$3,000, besides the salaries of professors, out of said tax, to be expended in establishing said school, and appointing, for the present, one professor in said school at the same salary as the other professors. Whether these resolutions constituted a performance of the condition of the appropriation, *quere*: *People v. Auditor-General*, 17 M. 161.

9. Whether the provision in H. S. § 4909 that there shall always be at least one professor of homeopathy in the department of medicine of the university is repugnant to Const., art. 13, which confers upon the regents the power of general supervision of the university, *quere*; the court being equally divided: *People v. Regents*, 18 M. 469.

10. An application was refused for a *mandamus* to compel the regents to appoint and maintain two professors of homeopathy in the department of medicine, in accordance with the provisions of the act of 1873: *Attorney-General v. Regents*, 30 M. 473.

11. By act 14 of 1869, appropriating money for the university, it was also intended to give to the university whatever should be collected under act 59 of 1867: *People v. Auditor-General*, 19 M. 13.

12. As to allowance by regents of expenditures by officers, and as to responsibility of director of laboratory for moneys received by assistant, see *University v. Rose*, 45 M. 284. See *AGENCY*, §§ 93, 143; *EQUITY*, § 693.

USAGE.

See CUSTOM AND USAGE; CONTRACTS, IX, (b);
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I. CONTRACTS; RIGHTS THEREUNDER.

(a) *In general; requisites; validity.*

1. Where lands are transferred for other lands the transaction is practically a sale; so that a person responsible for the piece of land to be sold cannot exonerate himself by giving it away, or by exchanging it for other land instead of for cash: *Huff v. Hall*, 56 M. 456.

2. A party once shown to be a purchaser will be presumed to have still the rights of a purchaser unless something appears to the contrary. A lapse of two years is not enough to rebut the presumption; but whether the presumption might not in time be too weak to sustain judicial action, *quere: Ormsby v. Barr*, 22 M. 80.

3. Where a contract gives one the option of acquiring an interest in lands by paying a certain sum within a specified time, it vests him with no interest or estate in the lands; and if he fails to pay the money or any part of it within the time, the privilege given him by the contract is at an end, and his rights under it cease: *Richardson v. Hardwick*, 106 U. S. 252.

4. A written option for purchase binds if accepted within the time fixed by it; and where no method of acceptance is prescribed nor any arrangement made for a personal meeting, an acceptance sent by mail is good: *Wilcox v. Cline*, 70 M. 517.

5. When a vendor is negotiating with different persons for the sale of property, and it is known by all that a few days will decide on the establishment of a public improvement which will greatly affect its value, time may become so material that any delay by a proposed purchaser may justify the vendor in regarding the bargain as off: *Hawley v. Jelly*, 25 M. 94.

6. Where a contract for the purchase of standing timber provides that the purchaser shall also have the refusal of the land itself for a given time at a stated price, his taking possession within that time, with the exercise and assertion of ownership beyond what relates to the timber, amounts to an irrevocable election to keep the land: *Curran v. Rogers*, 35 M. 221.

7. A contract for the sale of lands does not become completed where the party offering terms withdraws them before they are agreed to: *Wardell v. Williams*, 62 M. 50.

8. A written instrument agreeing to sell standing timber on certain terms, and to make a contract, is not a contract, but merely an offer to make one, and will not of itself support an action: *McDonald v. Bewick*, 51 M. 79.

See, also, as to acceptance, STATUTE OF FRAUDS, §§ 11, 12, 18, 19.

9. Where a contract for the sale of land is executed in duplicate, each duplicate is to be treated as an original; and where the parties intend so to execute a contract, it *seems* that the contract is not complete and duly executed until duplicates at least substantially alike are executed and delivered: *Crane v. Portland*, 9 M. 493.

10. Where the papers so intended as duplicates were not substantially alike, and where the vendor's name was attached without written authority from him, it was *held* that the vendor's accepting one paper and signing his name to it without the vendee's knowledge or assent did not bind the latter: *Ibid*.

11. Where a land contract is, as to one vendor, executed without written authority, a subsequent approval indorsed by him upon the duplicate retained by the vendors does not validate the contract unless there is some distinct act of ratification on his part that establishes a mutuality of obligation between himself and the vendee: *Dickinson v. Wright*, 56 M. 42.

As to mutuality and completeness, see, also, SPECIFIC PERFORMANCE, I, (b), 3.

As to ratification of agent's unauthorized contract, see STATUTE OF FRAUDS, §§ 28, 89, 202, 205.

12. A parol contract to sell lands was good at common law, and is only made void by statute. That such a contract relating to land in Illinois is void cannot be assumed without proof of a statute avoiding it: *Ellis v. Maxon*, 19 M. 186.

See STATUTE OF FRAUDS.

13. An informal paper signed by an heir with but one witness, wherein she admitted payment "to her full satisfaction of all her right, title," etc., in the estate for which she "signed off" all such right, etc., *held* to have the effect of a written contract of sale and to convey an equitable title: *Hyne v. Osborn*, 62 M. 235.

That a deed without witnesses is good as a contract to convey, see CONVEYANCES, § 52.

14. Executory contracts for the sale of land need not be sealed to satisfy the requirements of the statute of frauds: *Enos v. Sutherland*, 11 M. 538; *Hammond v. Hannin*, 21 M. 374. (See H. S. §§ 5709-5718 as to the executing, attesting and recording of such contracts.)

15. And though bearing no certificate of acknowledgment, a land contract, if known to a subsequent purchaser, cuts him off (so

held of a contract executed in 1873): *Hains v. Hains*, 69 M. 581.

16. Whether a land contract is invalid because not attested by two witnesses as required by the act of 1879 (H. S. § 5709), *quere*; the court not passing on the question: *Wardell v. Williams*, 62 M. 50.

17. A sale of standing timber with leave to remove it within three years is valid so far as the vendor is concerned, or any one claiming under him, though not owning it at the time of the sale, if he obtains title to it within the three years: *Haskell v. Ayres*, 35 M. 89.

(b) Construction of contract.

18. That certain other lands were agreed to be conveyed as collateral security for the vendee's performance of a contract of purchase of timber lands, does not affect the construction of the contract or the vendor's rights under it: *Jennisons v. Leonard*, 21 Wall. (U. S.) 302.

19. A contract for the sale of lands embraces only the lands specifically described and cannot be extended so as to include other lands, although it contains a clause that the purchase is intended to be of all lands still belonging to the vendor: *Gibbs v. Diekma*, U. S. Book 26 (Co-op. ed.), 177.

20. Under a contract to convey, at a gross sum, "fourteen lots of 20 feet front by 100 feet deep, part of the Benvilla plat, three lots fronting on F. street and eleven immediately back," and further promising if the vendee "should prefer the same number of lots on W. street or B. avenue" (then unplatted) "that he shall have his choice." *Held*, that the vendor had no right, upon the vendee's failure to select lots instead of those in the rear of the F. street lots, to substitute others on W. street for such lots; and further, that the vendor had no right to debar the vendee from his selection by so platting the lots on W. street and B. avenue as not to conform in size with the lots designated: *Robinson v. Cromelein*, 15 M. 316.

21. A vendor is bound by the exact terms of his contract of sale in reference to quantity: *Heyer v. Lee*, 40 M. 353.

22. A contract for the purchase of the north half of a certain lot which is bounded on the west side by a river running so that the north line of the lot is longer than the south line calls for the north half in quantity, divided from the remainder by an east and west line: *Au Gres Boom Co. v. Whitney*, 26 M. 42. See *Dart v. Barbour*, 32 M. 267; *Jones v. Pashby*, 48 M. 634, 62 M. 614.

23. L. contracted in writing, with H., in Chicago, to sell her "the south half" of his fruit farm in Michigan; but, after acceptance of the deed, she discovered that the bounds given therein included nearly half an acre less than half of the farm, and that the actual south half would include a valuable barn. *Held*, that she was entitled to a conveyance of the fraction including the barn: *Heyer v. Lee*, 40 M. 353.

24. A stipulation in the contract that the vendee shall "improve the premises," but specifying neither the kind nor the extent of the improvements, is so indefinite that the intention of the parties cannot be known; and it cannot be enforced: *Morris v. Hoyt*, 11 M. 9.

25. A contract for the purchase of land which provides for the payment by the purchaser of a stipulated price, and that he shall also "well and faithfully in due season pay or cause to be paid all taxes and assessments," etc., "upon the said premises," etc., is ambiguous as to whether it does not throw upon the purchaser the duty to pay back-taxes then known to be a lien upon the lands; the words "all taxes," etc., "upon the said premises," being as applicable to taxes then existing as to future taxes, and the requirement to pay in due season possibly meaning in season to prevent the land being sold for taxes: *Jones v. Wells*, 81 M. 170.

(c) Operation and effect.

1. Generally.

Buildings erected by vendee are realty, see REAL PROPERTY, §§ 6, 7.

26. C. and B. made a written contract by which B. was to manufacture lumber, and on settlement was to apply part of the amount due him in payment for land which he occupied under an oral agreement to buy it from C., and from which he cut timber. But on final settlement he refused a deed and sued for the amount that was to have been applied in payment for the land. *Held*, that he could not recover the amount under his contract, but could only recover a reasonable saw-bill, which could not be measured by contract rates: *Cilley v. Burkholder*, 41 M. 749.

27. A clause in a land contract providing that the vendors "are to have one-half of the proceeds of the hay raised on said premises until the whole amount is paid" gives them no title to or right of possession in the hay, but means that the vendee is to account to them in money for the value of one-half

thereof: *Witheral v. Muskegon Booming Co.*, 68 M. 48.

28. In equity a vendee, under a contract for the sale of lands, is considered as a trustee of the unpaid purchase money for the vendor, who is regarded as a trustee of the land for the former: *Wing v. McDowell*, W. 175; *Michigan State Bank v. Hastings*, 1 D. 225.

29. The estate of one in possession of lands under a contract of purchase is that of a tenant at will: *Dwight v. Cutler*, 8 M. 566; *Crane v. O'Reiley*, 8 M. 812; *Hogsett v. Ellis*, 17 M. 351.

30. A clause in a contract of purchase that on default by the purchaser the seller might declare the contract void, and the purchaser should thereafter be deemed a mere tenant at will, and liable to be proceeded against as such, confers no additional rights, and is merely declaratory of the actual relation and rights of the parties: *Crane v. O'Reiley*, 8 M. 812.

31. A contract for the future sale and conveyance of lands gives no present right of possession to the vendee without special provisions to that effect; nor does it even operate as a license to use the lands until it is performed: *Druse v. Wheeler*, 22 M. 439, 26 M. 189.

32. Any license to the vendee to enter and make improvements that is implied from an executory contract for the sale of lands is revocable at law, and is revoked by a subsequent conveyance to a third party: *Buell v. Irwin*, 24 M. 145.

As to licenses generally, see LICENSE.

33. The purchaser in a land contract may, in such contract, waive the right to a notice to quit on default: *Crane v. O'Reiley*, 8 M. 812.

34. A receipt for a payment on a sale of land does not of itself entitle the purchaser to take possession before he has fulfilled the terms of the sale: *Gault v. Stormont*, 51 M. 636.

35. In a contract for the conveyance of any interest in land which the vendor may have, an agreement by him that the vendee may enter on the land and cultivate the same is not an agreement to convey and transfer the possession of the land: *Clee v. Seaman*, 21 M. 287.

36. And if, in such a contract, the vendee agrees that if he violate any of its provisions he shall forfeit all right under it, and may be removed in the manner provided by law for the removal of a tenant holding over, while this might estop him to deny, in the particular proceeding specified, the right of the vendor to remove him, he will not be estopped in an

action of ejectment to deny the plaintiff's title: *Ibid*.

As to estoppel against vendee from disputing vendor's title, see ESTOPPEL, §§ 107, 120, 121.

2. Passage of title.

37. An executory contract for the sale of land has no tendency to show any legal title in the vendee or in any one claiming under him: *Buell v. Irwin*, 24 M. 145.

38. But although at law the title remains in the vendor, equity regards the contract as conveying it to the vendee: *Fitzhugh v. Maxwell*, 34 M. 138.

39. The land is in equity the property of the vendee, who may dispose of or encumber it in like manner with land to which he has the legal title, subject to the rights of the vendor under the contract: *Wing v. McDowell*, W. 175.

40. But a mortgage given by the vendee conveys no legal interest, and the record of such mortgage is notice to no one: *Ibid*.

41. When timbered land is subject to a contract of sale which provides that no trees shall be cut until full payment is made, the equitable right to the timber is nevertheless in the purchaser, and becomes a legal right when he has made or tendered full performance, even if he or some other person has wrongfully cut the timber meanwhile: *Haven v. Beidler Manuf. Co.*, 40 M. 237.

42. Under a contract for the absolute sale of the wood and timber on certain lands, to be removed at certain specified times, the wood and timber remain the property of the purchaser though not removed within the time provided; and the taking and removal of the same by the vendor is a wrongful conversion, for which the purchaser has a clear right of action, though he may himself be liable for a breach of his covenant to remove the same within the times specified: *Green v. Bennett*, 28 M. 464.

43. But if the sale be conditioned upon the provisions for removal, the vendor may hold everything not removed within the time specified, and this would be his only security against, and remedy for, the failure to perform the condition; but if he waive the condition, as he would by claiming and receiving damages from the purchaser for such failure, the wood and timber would remain the purchaser's property, to be removed within a reasonable time: *Ibid*.

44. A contract for the sale of all the pine timber on certain lands at a given price per thousand, to be removed within a stated time,

gives no authority to cut and remove it after the time has expired, and conveys no title to logs thereafter cut on those lands by third parties: *Huskell v. Ayres*, 32 M. 93.

45. A sale of standing timber, to be cut and removed within a certain time, limits the time for cutting and removing, and is a sale only of so much as is cut and removed within that time: *Utley v. Wilcox Lumber Co.*, 59 M. 263.

46. A contract for the sale of timber does not give the title thereto if it provides that, after being fully paid for, all that is not removed within a specified time, or all that is removed before it is fully paid for or consent is indorsed on the contract, shall belong to the vendor: *Wasey v. Mahoney*, 55 M. 194.

47. Under a contract transferring all the pine trees the vendee "may choose to take," the latter agreeing to pay a certain sum "for the said pine so cut," etc., title did not pass until the pine was cut; and until then the vendee had neither actual nor constructive possession, and could not bring trespass for damages against a grantee of the vendor who had cut timber on the land: *Pfistner v. Bird*, 43 M. 14.

48. A contract in writing, executed by the grantee in a warranty deed, and dated the day of the acknowledgment of the deed, which, after reciting the purchase of the land, provides that "all the sawing pine and white-wood timber that is now upon the above-described tracts of land belongs to" the grantor named in such deed, "who is sole owner thereof," and that he "has, by agreement, thirty months from this date to remove the same," is held to be something more than a revocable license, and as securing to the grantor, as against his grantee and all others having notice thereof, the existing ownership of such of the timber, whether severed or standing, as he should take off in thirty months. The contract and deed are to be construed together as parts of a single transaction: *Johnson v. Moore*, 28 M. 3.

49. Standing timber was absolutely sold by written contract, under seal, giving the vendee (who paid in full) the right for two years to enter and remove the same. Subsequent parol extensions were made by the vendor, who, before the last extension expired, sold the land to third parties acquainted with the facts, and they forbade the vendee to cut, as he had commenced to do. The court was equally divided as to whether the vendee, suing in trespass, should recover for the value of all the timber or only for that which was severed: *Williams v. Flood*, 63 M. 487.

50. A sale of all the "merchantable" timber on specified lands transfers the title at once; and the only question left open as to any particular timber on the lands referred to is one of fact as to whether it is or is not merchantable: *Haskell v. Ayres*, 35 M. 89.

51. A contract for the sale of lands and timber authorized the purchaser to sell the timber, but it was further agreed that the title to it should remain in the original vendors until full payment was made, and as soon as the purchaser effected a sale the proceeds should be applied on his own purchase. *Held*, that the contract gave the purchaser power to transfer title to his vendees: *Oriman v. Shaw*, 37 M. 448.

(d) *Rescission.*

Of sales of personalty, see SALES, IV, (b).

Of contracts generally, see CONTRACTS, XIII.

See, also, EQUITY, II, (j), 3.

52. One who purchases under a warranty deed, containing covenants of seizin and quiet possession, cannot rescind the bargain on the ground of a mistake as to the extent of the vendor's title if the mistake does not go to the entire consideration; as where he supposed the vendor had title in fee-simple instead of a mere life estate: *Leal v. Terbush*, 53 M. 100.

53. And where the vendee's mistake as to the extent of the vendor's interest is one of law, arising from the construction of a recorded will wherein the vendee is a devisee, it seems that it cannot avail him for rescission: *Ibid*.

54. One who buys land orally, paying part of the purchase price and agreeing that a mortgage on the premises shall be paid out of the purchase money, cannot, having gone into possession, and having been tendered a discharge of the mortgage and a sufficient deed, claim a rescission of the contract because of such mortgage: *Bailey v. Cornell*, 66 M. 107.

55. Where an oral bargain for the purchase of land is made by the vendee through the vendor's agent, and the vendee enters into possession under circumstances such that she could enforce the contract against the vendor, she cannot, after paying the price, and after the agent has remitted it to his principal, repudiate the contract and hold the agent for the money paid to him; her remedy, if any, is against the vendor: *Ibid*.

56. A bill was filed to set aside an exchange of real estate for fraud in representing defendant's lot to be unencumbered, and the main defence was that complainant's land was also encumbered. Defendant had sold the

land obtained on the trade to a purchaser who had connived in the fraud. It appeared that the encumbrance on complainant's land was a mortgage which covered some adjacent property, and that the latter had been sold subject to the entire mortgage; and it was not shown that this mortgage had been concealed. *Held* proper to rescind the bargain, and that, under the prayer for cancellation and general relief, it was proper to decree that conveyances be made to restore the title: *Knowlton v. Amy*, 47 M. 204.

57. Where one conveyed land with the understanding that the grantee could and would maintain him for the rest of his life, but proved that the grantee did not and could not give him a quiet, comfortable and respectable home, *held*, that a reconveyance should be decreed: *Humphrey v. West*, 40 M. 597.

58. A few inches' deficiency in the area of land contracted for, to the vendee's damage of only \$25, and not affecting the enjoyment of the rest of the land, will not sustain a bill to rescind the contract for false representation as to the area: *Steinbach v. Hill*, 25 M. 78.

59. A man had a contract from his brother for certain land, the vendor reserving the right to declare it void if any payment was a month overdue. The vendee was to pay all taxes. The contract was in duplicate. No one held continuous possession of the land. Only one payment was made on the contract, and several years later the vendor, in furnishing a tax-list of his lands, included the property in question as if it were land upon which it was his duty to pay the taxes, distinguishing it from some other land on which others ought to pay. After the death of both parties both copies of the contract were found among the vendor's papers, and his administrators filed a claim against the vendee's estate for the amount unpaid on the contract. *Held*, that on the facts above stated they did not make out a case; the facts indicated that the contract had been rescinded: *Swain v. Baldwin*, 54 M. 119.

60. The grantors under a land contract cannot repudiate it merely for a brief delay in performance when they have retained the first payment and taken no measures to forfeit the contract, and no injurious change has occurred in values or in any other way: *Kimball v. Goodburn*, 32 M. 10.

61. Where a man is defrauded in a trade for land he loses no rights by neglecting to pay up taxes assessed against the other party, when he has made his demand for rescission before the period for redemption expired and in time to enable the other to protect his

rights by paying the tax: *Place v. Brown*, 87 M. 575.

62. A vendor's right, if any, to rescind his conveyance because the consideration turns out to be partially worthless is barred by his using the consideration or part of it and allowing the land to be improved and new interests to arise: *Dunks v. Fuller*, 82 M. 242.

63. A party defrauded in a contract of sale must make his election on the discovery of the fraud, or within a reasonable time thereafter, whether he will rescind the contract or resort to an action on the case for damages: *Carroll v. Rice*, W. 873; *Merrill v. Wilson*, 66 M. 232.

64. If the condition of the property has been so changed that the parties cannot substantially be placed back where they were before the sale, the party defrauded cannot claim rescission, but must resort to an action for damages: *Ibid*.

65. The vendee in a land contract went into possession and cut timber. The vendor could not make out a title, whereupon the vendee sued to recover money paid under the contract. *Held* that, as the value of the property was ascertainable, the vendee was entitled to rescind although he could not place the vendor *in statu quo*: *Wright v. Dickinson*, 87 M. 580.

66. Where the vendor in an executory contract for the purchase of lands receives from the vendee a quitclaim deed for the lands, this is a rescission of the contract; and he cannot afterwards maintain an action on notes which were given for the purchase price: *Ives v. Lansingburgh Bank*, 12 M. 361.

67. A vendor having on default by the vendee elected to treat the contract as void, and having given the vendee notice to quit, must be regarded as having relinquished the right to the amount then due on the contract. He cannot treat the contract as void in respect to the rights which it secured to the vendee, and valid in respect to those which it secured to himself: *Goodspeed v. Dean*, 12 M. 352.

68. Where the vendor in a land contract sells the land to some one else than the contract purchaser, without his consent, the latter has a right to consider the contract rescinded, and to have what he has paid thereon refunded, subject to any equitable deductions: *Atkinson v. Scott*, 36 M. 18; *Weaver v. Aitcheson*, 65 M. 285.

69. When a person who has contracted to sell land proceeds to rescind the contract and oust the other party, the latter may acquiesce and consider it at an end; and as there is a failure of consideration for whatever he has

paid on the contract, he may recover it back: *Davis v. Strobbridge*, 44 M. 157.

70. The vendee's voluntary relinquishments of all rights under the contract of purchase, and his voluntary surrender of possession to the vendor, operate to terminate his equitable interest: *Jennisons v. Leonard*, 21 Wall. (U. S.) 302.

71. Where land is cleared in reliance on a contract for its sale, and the contract is rescinded without fault of the party relying on it, and the benefit of the work is appropriated by the other, the latter becomes liable to pay for it: *Davis v. Strobbridge*, 44 M. 157.

72. Where the vendor of land exchanged for personal property seeks to rescind the exchange for fraud, he must tender a reconveyance. A mere offer to "trade back" is not enough: *Wilbur v. Flood*, 16 M. 40.

73. A vendor by bringing suit to recover the unpaid purchase money on a sale of lands alleged to have been induced by fraud affirms the sale and cannot seek to rescind it; nor could he rescind it in any case without first returning the money received: *Merrill v. Wilson*, 66 M. 232.

74. A man exchanged land for a note and a corresponding interest in a mortgage securing this note and another. He afterwards acquired the other note independently. *Held*, that in demanding rescission of the trade he was under no obligation to surrender the second note: *Place v. Brown*, 87 M. 575.

75. Upon the rescission of a land contract by the vendor the vendee was *held* entitled to recover the value of the improvements made by him upon the premises, less the value of the use of the premises while in his possession, and also to recover, less the costs of collection, the sum recovered by the vendor on a note made by third parties which he had agreed to receive as part of the purchase price: *Sheard v. Welburn*, 67 M. 387.

II. FALSE REPRESENTATIONS.

In sales of personalty, see SALES, II.
And see FRAUD, I, (b).

76. Vendors acquainted with lands sold them, with false representations as to their quality for timber, etc., to vendees who had never seen them. The bargains were rescinded in chancery: *Jones v. Wing*, H. 301; *Rood v. Chapin*, W. 79.

77. False and material representations as to the character and surrounding advantages of lands traded for other land were made by the owners, knowing or having good reason to know that they were deceiving the other

party. *Held*, that equity would grant rescission: *Match v. Hunt*, 88 M. 1.

78. Where one with full knowledge of the property, concerning which the owner knew little, designedly contrived by the concealment of material facts to deceive the latter as to its value, and by misrepresentations, etc., induced him to abstain from seeking information, and obtained from him a contract for the sale of the property at much less than its value, the agreement was *held* voidable for fraud. Such concealment is often sufficient to create fraud, and under such circumstances a party is strictly accountable for all of his representations: *Swimm v. Bush*, 23 M. 99.

79. Where a vendor of real estate, for the fraudulent purpose of effecting a sale, makes a positive false representation that there is no mortgage upon it, he is liable in an action for fraud, or the vendee may rescind: *Bristol v. Braidwood*, 28 M. 191.

80. False representations and concealments by a vendee as to the value of the lands *held* not to warrant setting aside the sale where the opportunities of both parties for knowledge were equally good, where there was no fiduciary relation, and where each party had in fact been trying to overreach the other: *Williams v. Spurr*, 24 M. 835.

81. One who, during the negotiations for the sale of lands, professes to have peculiar scientific knowledge as to the probability of the lands proving valuable for the production of oil, and falsely represents the value of the lands for oil, is liable if the purchaser relies upon such professions and is deceived by such false assertions of value: *Kost v. Bender*, 25 M. 515.

82. The representations of one who has been in the actual occupation and cultivation of land, and purports to speak from actual results, so far combine matters of fact with matters of opinion that a purchaser is justified in placing some reliance on them: *Wright v. Wright*, 87 M. 55.

83. False representations as to the value and location of land in Kansas, made by one who claims to have personal knowledge thereof, and who is seeking to sell the land or exchange it for land in Michigan, cannot be considered mere matter of opinion, and the buyer relying thereon is entitled to recover damages: *Nowlin v. Snow*, 40 M. 699.

84. A. exchanged a city lot for B.'s farm and \$200, B. falsely stating that he had a good title, and exhibiting, to deceive A., an abstract which incorrectly — through the unintentional mistake of the register of deeds — showed a clear title in B. *Held*, that A. was

entitled to have the bargain rescinded upon repayment of the \$200 and tender of a quitclaim to B.'s land: *Scadin v. Sherwood*, 67 M. 230.

85. The vendor's false representation as to the rate of interest on a mortgage subject to which he sells is material in an action based on fraud in the transfer: *Jackson v. Armstrong*, 50 M. 65.

86. The constructive notice furnished by the record of a mortgage will not deprive a purchaser of the right to rely on the vendor's positive statements, fraudulently made, that the property is unencumbered; nor will it prevent him from suing for the false representations: *Weber v. Weber*, 47 M. 569.

87. A vendor of land who falsely represents its area so positively as to restrain the vendee from further inquiry cannot defend against the charge of fraud on the ground that the vendee saw the land and could judge of its extent for himself: *Starkweather v. Benjamin*, 32 M. 305.

88. One who obtains land in a trade, and before doing so goes upon and looks at it, has nevertheless a right to show that he was misled by the representations of the other party, if they related to matters of which no one could adequately judge on a casual inspection; such as the capability of the land for drainage and the reason why water was standing. The fact of fraud in such representations is for the jury: *Jackson v. Armstrong*, 50 M. 65.

89. Where a party is deceived into a purchase of land by the acts and misrepresentations of the vendor, however innocently done or made, and the deception went to the essentials of the contract and worked serious injury, it *seems* that a bill to rescind will be sustained: *Steinbach v. Hill*, 25 M. 78.

90. Where the vendor of land by misrepresenting its extent induces the purchaser to incur a liability for land which the vendor is unable to convey, the effect of the transaction in the contemplation of the law is a fraud upon the purchaser, even though both parties acted in good faith: *Baughman v. Gould*, 45 M. 481.

91. Damages may be recovered for misrepresentation of the value and quality of lands sold to plaintiff by defendant, whereby plaintiff was deceived, even though no actual fraud was intended: *Holcomb v. Noble*, 69 M. 896.

92. Advice by one party in an exchange of land to the other to visit the former's land before the trade took place, and an offer to go and show it to him, were *held* not to have avoided the effect of a fraudulent representation: *Rood v. Chapin*, W. 79.

93. Evidence of common report as to the area of a piece of land is not admissible to rebut the presumption of fraud arising from positive false statements thereon made by the vendor of the land to the vendee, even if the rumors are traced to the vendee himself. He would be justified in believing the vendor's statements to be based on better knowledge: *Starkweather v. Benjamin*, 32 M. 305.

94. A misrepresentation, however fraudulent, does not avoid a sale, unless it served to deceive the vendee at the time the sale became binding on him. So held where, pending the negotiations for the purchase of a salt well, and during the vendor's representations as to the strength of the brine and its freedom from gypsum, and before the purchaser was bound by the contract, the latter was working the well: *Whiting v. Hill*, 23 M. 399.

95. Where A., trying to sell lands to B., makes false and fraudulent representations to C., who believes these representations, and at A.'s request urges B. to purchase, a charge that A. is liable to the same extent as if the representations had been made directly to B. is too broad, as it does not show that the representations were ever communicated to B. or that B. was affected by them: *Kost v. Bender*, 25 M. 515.

96. Where one, as agent of his wife, made a fraudulent sale of her land and took a mortgage for deferred payments, and subsequently became the assignee of the mortgage and filed a bill to foreclose it in his own name, it was held that he might, as to all equities growing out of his fraud or deceit in making the sale, be treated directly as the vendor and mortgagee: *Burchard v. Frazer*, 28 M. 224.

97. Where such agent knew that the land in question contained twenty acres less than was represented in the proposal for sale, and knew that the purchaser was deceived by his misrepresentations as to the quantity, and still sold for a price corresponding to the larger quantity, he was guilty of deliberate fraud in thus misrepresenting and selling: *Ibid.*

98. The vendor of lands, at the time of conveyance, delivered to the vendee a written statement which contained part, but not all, of the parol representations that had been made by her and relied on by the vendee. Held, that those not contained in the writing were not cut off by the deed and writing, but were available to impeach the transaction for fraud: *Match v. Hunt*, 38 M. 1.

99. Where C., having no title to part of certain lands and a defective title to the rest, sold them to S.—representing that he had title and would convey it—and then quit-

claimed them to S., it was held (1) that S. need not rescind the bargain or tender reconveyance before suing C. for obtaining his money by false representations; (2) that S.'s right of recovery was not affected by his having moved upon the premises soon after the purchase and by his not having as yet been ejected or disturbed; (3) that S. was entitled to recover the difference between the value of the title he had bargained for and that which he actually received; or, that he could recover what he was compelled to pay to perfect his title: *Stockham v. Cheney*, 62 M. 10.

As to damages for false representations in sale of land, see DAMAGES, §§ 110, 224, 225, 522, 523.

As to evidence, see EVIDENCE, §§ 110-114, 185, 196, 711, 770, 771.

III. WARRANTIES.

100. A vendor's representation that the land he sells is valuable for oil is no warranty, and therefore evidence as to subsequent expenditures by the vendee in boring for oil is immaterial in an action on his note for the price: *Kost v. Bender*, 25 M. 515.

No warranty implied against unsoundness in sale of standing timber, see SALES, § 146.

IV. PERFORMANCE; BREACH.

As to enforcement, see SPECIFIC PERFORMANCE.

As to part performance, see SPECIFIC PERFORMANCE, I, (b), 8; STATUTE OF FRAUDS, IX.

(a) Performance by vendor; the title.

101. Where a contract for the sale of land expressly fixes the time of performance—e. g., for the vendor to convey—it binds the parties, and no inquiry can be made as to what would have been a reasonable time for such performance: *Abell v. Munson*, 18 M. 306.

102. Where the owner of lands contracted with the trustees of an adjoining church to deed to the church certain premises in consideration of a certain quitclaim of lands to him, and of certain other things, as soon as the trustees could get legal authority to act, it was held that until they obtain authority, and deeded to him, he was not required to take any steps for their benefit: *Druse v. Wheeler*, 22 M. 439.

103. A purchaser gave his bond and mortgage for the purchase price, and received from attorneys who were acting for both parties a receipt therefor, stating that the attorneys

were to hold the same without attempting their enforcement until conveyances of the property purchased were made. It was held that the vendors had performed on their part when they had executed the conveyances and left them with the attorneys: *Van Dyke v. Davis*, 2 M. 144.

104. Unreasonable delay by the vendor in tendering a deed is immaterial where the vendee keeps general control of the land and has not sought to rescind: time is not of the essence in such a case: *Curran v. Rogers*, 85 M. 221.

105. A contract provided that the vendee of a house should pay a certain sum on taking possession, when completed, on or before a certain date. Held, that payment in advance and taking possession while the house was still unfinished did not waive the vendor's obligation to finish it: *William v. Hodges*, 41 M. 685.

106. In every contract for the sale of lands, unless the contrary intention is expressed, there is an implied undertaking on the part of the vendor, available at law as well as in equity while the contract remains executory, to make out a good title clear of all defects and encumbrances: *Dwight v. Cutler*, 8 M. 566.

107. The vendee has a right to a good title, that the deed shall contain proper covenants, and that the title shall be a marketable one, not open to reasonable objection: *Allen v. Atkinson*, 21 M. 351.

108. The vendor, unless there is something in the contract to show a contrary intention, or unless he acts in a ministerial or fiduciary capacity, impliedly engages to convey by a deed containing the usual covenants; and in this state lands are usually conveyed by deeds containing a general warranty: *Dwight v. Cutler*, 8 M. 566; *Allen v. Atkinson*, 21 M. 351; *Brand v. Frumveller*, 82 M. 215; *Gault v. Van Zile*, 87 M. 22.

109. Where the deed tendered by plaintiff, as it did not contain a general warranty, was not such as the contract required, so that defendant was justified in refusing it, it was held that, as the failure to consummate the sale occurred through plaintiff's default, he was not entitled to recover for defendant's occupancy pending the negotiation: *Dwight v. Cutler*, 8 M. 566.

110. A vendee who is to have a deed of land, possession of which is to be reserved until October, is not bound to accept a deed which also reserves all crops produced before October: *Colgrove v. Solomon*, 34 M. 494.

111. Where the contract is silent as to the

title to be conveyed, such title is presumed to be good, and the burden is upon the vendee to show a defect that will justify the refusal of a proper deed: *Dwight v. Cutler*, 8 M. 566; *Daily v. Litchfield*, 10 M. 99; *Allen v. Atkinson*, 21 M. 351; *Baxter v. Aubrey*, 41 M. 18.

112. But when there is an apparent encumbrance of record, the vendee has a right to demand a reasonable time for investigation. Thirty days is not unreasonable for this purpose when the mortgagee resides at a distance, and it does not appear that in the meantime the relation of the parties has been changed: *Allen v. Atkinson*, 21 M. 351.

113. Where the vendor in a land contract has conveyed to a third person subject to such contract and with notice of the vendee's right, by deed containing all the covenants called for by the contract, the vendee on completing his payments is entitled to receive from such grantee a deed containing equally full covenants: *Lovejoy v. Potter*, 60 M. 95.

114. Where the tender of title under a land contract satisfies the requirements of the stipulations for it in other respects, it is not objectionable for coming from a third person instead of directly from a party to the contract: *Kimball v. Goodburn*, 82 M. 10.

115. A vendee cannot refuse a proper deed on the ground that the title is not as clear and marketable as the law requires merely because certain mortgages upon the land, though paid, have not been discharged of record; nor because a litigation is pending between strangers which involves the land in question but does not affect the vendor's title: *Curran v. Rogers*, 85 M. 221.

116. The levy of an execution against one person upon lands belonging to another does not of itself excuse a contract purchaser of the land from fulfilling his contract; and though one who has agreed by parol to take the land makes such a levy an excuse for breaking off negotiations, his act cannot in law be treated as a natural consequence of the levy: *Walkley v. Bostwick*, 49 M. 874.

As to construction of agreement relating to clearing land from claim of dower, see CONTRACTS, § 876.

117. A contract for the sale of a store was not to be binding on the vendee unless he could acquire from the vendor an indefeasible right to remove the front stairway in the building, and should be under no obligation, legal or otherwise, to maintain any stairway therein. The store was one of a block of three stores which had been specifically devised by the vendor's father to his children—the store in question to the vendor, the others to his

brother and sister. The estate was still unsettled. The stairway was used in connection with upper rooms in the other stores. *Held*, in an action by the vendor for damages for non-performance, that he could not recover, because he was in no position to comply with the terms of his contract to convey a perfect title and save defendant from all interference; for until the estate was settled he could have no indefeasible title, nor could the rights of the other devisees be settled in this suit: *Platt v. Newman*, 71 M. — (June 22, '88).

118. A deed was deposited in escrow with a written agreement by the grantor that the sale might be abandoned if the title to be conveyed should not be found by the depositary to be a full title in fee-simple and free from all encumbrances. *Held*, that this paper referred to the title as it stood when the arrangement in escrow was made, and did not bind the grantee to accept any future rectification: *Fletcher v. Moore*, 42 M. 577.

119. One who is entitled to a full conveyance waives nothing by taking a conveyance from the owner of a part interest in the legal title, and still retains his right to demand the remainder: *Lamore v. Frisbie*, 42 M. 186.

120. One who by the condition of a contract is entitled to a good and legal title to lands, and who accepts a warranty deed with collateral bond of indemnity against defects in the title, thereby waives strict performance of the condition, and becomes bound to pay the purchase money: *Rorabacher v. Lee*, 16 M. 169.

(b) *Performance by vendee; payment; default; forfeiture.*

As to interest, see INTEREST, §§ 12, 63, 68.

121. For a contract in which the agreements by a purchaser to take up two encumbrances were *held* not to be so connected that the necessity of paying a larger sum than was anticipated for one would excuse taking up the other, see *Kibbee v. Thompson*, 6 M. 410.

122. There is no known usage to fix periods of payment in contract for purchase of land: *Gault v. Stormont*, 51 M. 636.

123. Where a man, after making a contract of sale of land, leaves a life estate in all his property to his wife, and there is no administration, payments on the contract are good if made to her: *Lamore v. Frisbie*, 42 M. 186.

124. Up to the time when a large payment was made upon a land contract, payments were sharply looked after and promptly de-

manded; thereafter the vendee treated the property as his own, and no claims or demands were made until his death. The amount proved to have been paid being apparently sufficient to satisfy the original claim, the contract was treated as satisfied: *Day v. Cole*, 65 M. 129. Same case, on petition for leave to file bill of review, 65 M. 154.

125. A vendor's failure to take any steps to forfeit the contract of sale, or to demand further payment, or to dispossess the vendee, when, if his version of the contract were true, there were several instalments past due and unpaid, and his acceptance, as satisfactory, of payments which were much less than is now asserted to have been due at the time, are significant facts tending to discredit his testimony: *Rogers v. Odell*, 86 M. 411.

126. A contract was made for the sale of lands, the payments to be made to a third person who held a mortgage given by the seller. Payment was not made by the day and the seller declared the contract forfeited. The purchaser subsequently paid the money to the mortgagee, but without the seller's assent. It appearing that the land contract was designed to provide for the payment of the mortgage, it was *held* that when that was done, as it did not concern the seller whether the mortgage was paid one way or another, the contract was to be regarded as substantially complied with: *Richmond v. Robinson*, 13 M. 193.

127. Timber lands were sold by contract for a sum payable in three annual instalments, the vendee to have possession and to cut not less than 3,000,000 feet of logs in each of the three years, and to make monthly payments at the rate of a certain sum for each 1,000 feet cut; it being also provided that if in any year the monthly payments on the basis of the timber cut, taken together, fell short of the annual instalment due, the vendee should make up the deficiency, conveyance to be made on full payment. *Held*, that the payments were to be kept up in the ratio of the cutting, and that in case of a failure to pay, the vendor could enter and take possession of the "down timber" though the contract contained no clause of re-entry: *Jennisons v. Leonard*, 21 Wall. 302.

128. Pendency of suit against vendor and involving the validity of the title excuses failure on vendee's part to tender payment and demand deed: *Dickinson v. Wright*, 56 M. 42.

129. A land contract provided that on default the vendees should give up the property and pay all damages arising therefrom, the vendor to notify them in writing of the amount of the damages, such amount to stand as an

acknowledged obligation; and if the vendees objected thereto by notice within ten days, arbitrators should determine the amount. The vendor, on default, gave notice that the damages amounted to \$92, to which the vendees paid no attention, and suit was brought. Without deciding whether such a contract could be enforced according to its terms, *held*, that the statement of damages could include only such damages as could be recovered by suit, that it should be itemized, and might be disregarded if including, without means of separation, a claim for commissions paid by the vendor to his agent for making the sale: *Hubbard v. Epworth*, 69 M. 92.

130. The vendor will not be allowed to forfeit the contract for non-payment when, not having the title to convey, he is not in position to perform on his own part: *Converse v. Blumrich*, 14 M. 109.

131. A contract for the purchase of lands will not be treated as forfeited by non-payment at the day, where the parties themselves have not treated time as essential, and it is not expressly made so by the terms of the contract: *Shafer v. Niver*, 9 M. 258.

132. If, after forfeiture of a land contract and pending proceedings by the vendor to regain possession, the vendees without much delay tender payment of the purchase price and the costs of all proceedings already taken, the vendor should accept it; but a tender of mere taxable costs may not be enough; and in a particular case an allowance of \$300 beyond those costs was *held* reasonable: *Stickney v. Parmenter*, 85 M. 287.

133. A party in default in his payments on a land contract cannot, as a matter of right, discharge himself from all responsibility by tendering or paying simple interest, and become thereby entitled to a deed, especially where the other party has declared the contract forfeited for the default; a court of equity can require compound interest in such cases if justice demands it: *Richards v. White*, 44 M. 622.

134. A contract for the sale of timbered land required A., the vendee, to pay current and back taxes and an instalment of the price annually, but stipulated against waste. Time was made essential, and the contract was subject to forfeiture on default. The purchaser did not pay the taxes, but within the first year cut a large quantity of pine, which he sold, besides selling a parcel of the land on time. The vendors also, within the year, sold their interest to W., who went on the land and began to lumber it without any objection

from A., who did not offer payment, but some time afterwards assigned all his rights to G., who had full knowledge of the facts. G. then filed a bill against W. to restrain him from exercising acts of ownership. *Held*, that the bill could not be maintained, and that the complainant must be held responsible for all the expenses incident to the litigation, including charges, to which the suit gave rise, against lumber cut by W., who could include such charges in his costs: *Gram v. Wasey*, 45 M. 223.

135. A vendee of land who has neglected to comply with the terms of the written contract therefor will lose his rights under the contract if, after notice of forfeiture for such non-compliance, he allows the vendor to suppose that he has acquiesced in the forfeiture, and the vendor, in consequence, sells the land to another: *Truesdail v. Ward*, 24 M. 117.

136. Where one who occupied land under a contract to purchase made valuable improvements without any agreement with the owner at the time that he should be paid for them, and afterwards forfeited the contract or gave up the farm, he could not recover pay for the improvements unless it was agreed as part of the arrangement, or as one of the conditions upon which he gave it up, that he was to have pay for them: *Sword v. Keith*, 81 M. 247.

(c) *Recovery of purchase price.*

137. Where, in an action for the price of lands sold, the contracts of sale are declared on as valid at law, the suit must fail unless they are so; and if they were executed without authority as to one of the vendors they were not validated by mere acts of part performance on the vendee's part, even though they were acts of such a nature as would give a remedy in equity: *Dickinson v. Wright*, 56 M. 42.

138. Nor is the bringing of suit for the price an affirmance of the contract sufficient for the purposes of the case; the suit must fail unless there was a right of action previous to the time of instituting it: *Ibid*.

139. Where a vendee orally agrees with his vendor at the time of receiving a conveyance that if the premises when surveyed shall exceed the specified number of acres paid for he will pay for the surplus, there can be no recovery against him, even if such an agreement were valid under the statute of frauds, unless the deed describes and conveys more than the quantity paid for: *Lewis v. Pond*, 45 M. 46.

140. One who sues for the purchase price of land sold on contract is entitled to show that when he tendered the deed and other papers

in fulfilment of it no objection was made to them: *Gault v. Van Zile*, 87 M. 22.

141. Where one refused to pay his promissory note given for land of which the vendor had fraudulently claimed to be owner, and had given a mere quitclaim, a tender of reconveyance was unnecessary, since if there was no title there was nothing to reconvey and no covenants to release: *Reeves v. Kelly*, 30 M. 182.

142. Where it was shown that one who defended against the payment of a promissory note had given it for the purchase price of land that he had taken possession of under the plaintiff's deed and still held, it was admissible for him to show in explanation of his possession that after the real owner of the land had recovered judgment against him in ejectment his wife had purchased the title and he held under her purchase: *Ibid*.

143. A vendor who, having put his vendee in possession and tendered a proper deed, sues for vendee's failure to fulfil, may recover the purchase price: *Curran v. Rogers*, 85 M. 221.

144. Lands subject to mortgage were conveyed by A. to B. upon an agreement that B. should pay to A. the balance of the proceeds when he should sell the lands. B. traded them for other lands, and was held liable for the value of the lands he received beyond the mortgage: *Huff v. Hall*, 56 M. 456.

145. Vendees in a contract binding them to keep the premises in as good a condition as at the date of their contract until, by their payments, they become entitled to a deed, cannot set up in defence, when sued on their note for the purchase price, damages suffered by them in being deprived, by reason of defects in the title, of the right of cutting timber; for they had no such right: *Jennison v. Stone*, 83 M. 99.

146. In an action for an unpaid balance on a land contract it is proper to show by way of recoupment that, in consequence of the institution of a suit involving the validity of plaintiff's title, payments were deferred by mutual agreement, and that meanwhile the timber on the land was so far destroyed by fire as to lessen the value of land: *Dickinson v. Wright*, 56 M. 42.

(d) *Recovery by vendee.*

147. A right of action accrues to the vendee as soon as there is a breach by refusal to convey on demand accompanied by a proper tender: *Allen v. Atkinson*, 21 M. 351.

148. And the vendee is not deprived of his right of action for breach because, for a consideration moving from a third party, to whom

the vendor has conveyed the land, he has waived his right to a specific performance: *Ibid*.

149. A contract for the purchase price of land made by a father in the name of his minor son, held not to enable latter to recover back a payment made: *Armitage v. Widoe*, 36 M. 124.

150. One buying a growing crop by the acre and giving his note for the estimated quantity, with the understanding that the land was to be measured thereafter, is entitled after measurement to recover for any deficiency; he having paid the note to a bona fide purchaser: *Bennett v. Beidler*, 16 M. 150.

151. Where land is sold by virtue of the acceptance by the purchaser of a written proposition made to him by the vendor, naming the number of acres and proposing to sell it, "together with the house thereon, for the sum of thirty dollars for each acre of land, and fifty dollars for the house thereon," and the aggregate purchase price paid and secured to be paid amounts to the sum which the number of acres named in the proposition would amount to at the price named, with fifty dollars added for the house, it is to be regarded as a sale by the acre, and entitles the vendee, or those claiming under him, to a deduction for a deficiency in the number of acres from a mortgage given to secure payments: *Burchard v. Frazer*, 23 M. 224.

152. Where the vendor in a contract to convey land in fee is unable to make out a title the vendee need not tender performance to enable him to recover what he has paid less the benefits he has derived: *Wright v. Dickinson*, 67 M. 580, 590.

153. Even, though, having cut timber, he cannot put vendor in *statu quo*: *Ibid*.

154. Where the vendee tenders money in performance of his obligation the vendor has no right to the money except upon the condition of a simultaneous delivery of the deed; and therefore, in an action against the vendor for the breach of such a contract, it is not necessary to show that the tender has been kept good: *Allen v. Atkinson*, 21 M. 351.

155. Where the vendor of land rescinds his contract and ousts the vendee the latter may recover what he has paid: *Davis v. Strobridge*, 44 M. 157.

156. If the vendor, having title, refuses to convey, or if he disables himself from conveying, the measure of damages is the value of the land at the time of the breach: *Allen v. Atkinson*, 21 M. 351; *Hammond v. Hannin*, 21 M. 374.

157. And if, in such case, the vendee, for a consideration moving from a third party, has waived the right to specific performance, the measure of damages he may recover from his vendor is the difference between the actual value of the land at the time of the breach and the sum agreed to be paid, less the consideration received for the waiver: *Allen v. Atkinson*, 21 M. 351.

158. Where the vendor has acted in good faith, and is unable to convey a good title, the measure of the vendee's damages is the purchase money and interest, adding perhaps the cost of investigating the title; such measure being the rule where one who has no title conveys with warranty: *Hammond v. Hannin*, 21 M. 374.

As to damages for breach of covenant, see CONVEYANCES, §§ 361-368.

As to recovery back of payments made under contract void because in parol, see STATUTE OF FRAUDS, §§ 227-233.

V. VENDOR'S LIEN.

(a) *When attaches.*

159. The vendor of real estate has an equitable lien upon it for the purchase money, where no security for the payment has been taken by him: *Carroll v. Van Rensselaer*, H. 225; *Payne v. Atterbury*, H. 414; *Palmer's Appeal*, 1 D. 422; *Sears v. Smith*, 2 M. 243; *Mowrey v. Vandling*, 9 M. 39; *Converse v. Blumrich*, 14 M. 109.

160. The vendor of land who has taken no security, although he has made an absolute deed and acknowledged receipt of the purchase price, retains an equitable lien therefor (unless there be an express or implied waiver or discharge) against all persons except *bona fide* purchasers without notice: *Dunton v. Outhouse*, 64 M. 419.

161. As between grantor and grantee an estate is bound for the unpaid purchase money unless (1) there are arrangements between the parties which show that reliance is not placed on any unwritten claim against the land, or (2) such complications in their agreement that a court cannot define with certainty the precise amount due, or identify the lien to be enforced: *Hiscock v. Norton*, 42 M. 320.

162. The lien of a vendor of land for the purchase money does not attach unless the land is actually sold for an agreed consideration payable in any case and as the purchase price: *Palmer v. Sterling*, 41 M. 218.

163. A vendor's lien can exist only as collateral to a debt created simultaneously with

the sale and a part of it: *Ibid.*; *Dunton v. Outhouse*, 64 M. 419.

164. If the vendor takes a distinct and independent security for the purchase money, other than the personal obligation of the vendee — as the note or other obligation of a third person, or the obligation of the vendee with sureties — the lien is gone: *Palmer's Appeal*, 1 D. 422; *Sears v. Smith*, 2 M. 243.

165. One cannot become a purchaser by a transaction of which he is wholly ignorant, nor can there be as against him a vendor's lien for a purchase price which he never agreed to pay: *Weare v. Linnell*, 29 M. 224; *Dunton v. Outhouse*, 64 M. 419.

166. One who fraudulently and with no purpose of fulfilment procures a conveyance in consideration of an agreement to obtain a conveyance of other lands to the grantor, and then retains title and possession, may be compelled in equity to pay the value of the premises, as if on a completed sale to him; and the existence of a legal remedy will not prevent a resort to equity to have the agreed consideration or the value of the premises out of which complainant has been cheated declared an equitable lien on the lands: *Merrill v. Allen*, 38 M. 487.

167. Complainant and defendant agreed jointly to build and keep a hotel on defendant's land, with an option to complainant to buy defendant's interest by paying for the land and repaying defendant's expenditures. *Held*, in a suit for specific performance, that defendant had an equitable lien for the purchase money, which should be sold to satisfy such lien as in mortgage cases: *Johnson v. Fowler*, 68 M. 1.

168. A vendor's right to a lien is not, it seems, confined to the sale of a legal title or of a title in fee, but extends to equitable titles, subject to the risk that *bona fide* purchasers from the legal holder may intervene and break it: *Ortman v. Plummer*, 52 M. 76.

169. Whether, where an infant buys land, giving back a mortgage for the purchase price, and after coming of age disaffirms the mortgage, the vendor's equitable lien does not attach to the land, *quere*: *Young v. McKee*, 13 M. 552.

170. In a case where a conveyance of land appeared to have been made without consideration and to overreach creditors, a court of equity refused to enforce a vendor's lien for an indebtedness due from the grantee to the grantor at the time of the transfer: *Dunton v. Outhouse*, 64 M. 419.

171. A woman deeded the west half of a quarter section of land to her brother, and

took back a lease of it, and at the same time the parties made an agreement whereby he was to build her a house on the west half and she was to let him and his wife occupy a portion of it during their natural lives, and was also to let to him the whole quarter section for the term of her own natural life for a certain proportion of the crops. The conditions of the agreement were too indefinite to be estimated at a fixed sum. *Held*, that the three transactions must be construed together, and that an equitable lien on the land for the fulfillment of their conditions was not enforceable: *Hiscock v. Norton*, 43 M. 320.

172. A vendor's lien being in the nature of an equitable mortgage, an execution sale of the premises upon a judgment for the purchase price negatives, it seems, the claim of lien: *Clark v. Stilson*, 36 M. 482.

173. Where a person claiming to have a vendor's lien upon lands has mingled his claim for purchase money with a claim for the price of personal property in a single judgment in such manner as to render it impossible to determine how much of the judgment represents the price of the land and how much the value of personal property, and under this judgment has proceeded to execution levy and sale of the premises in question, his lien as vendor for the purchase money is lost: *Ibid*.

174. Where the purchase price of one parcel of land is so blended in a mortgage with that of another that it cannot be separated, no lien beyond the mortgage itself can properly be enforced: *Ortman v. Plummer*, 52 M. 76.

175. A bill to establish and enforce an equitable lien for a portion of the purchase price of certain primary school lands was brought by an intermediate owner of said lands against his vendee. *Held* sustained by a showing that after the original purchase, and an assignment of a portion by the original purchaser through mesne conveyances to complainant, and a sale by complainant of his portion to defendant, with delivery of possession, the defendant, through collusion with the original purchaser, procured new certificates from the state land office to himself and to such original purchaser for their respective interests, and that defendant afterwards, upon a settlement with complainant, assigned to him all defendant's interest in these lands as security for payment of the amount due him, which assignment, however, defendant repudiated as having been executed on Sunday, and under threats of criminal prosecution: *Jones v. Sackett*, 36 M. 192.

(b) *Pleading; evidence; practice.*

176. A vendor's bill to enforce a lien is uncertain if it alleges that the purchase price was to be paid in five or six years at ten per cent. interest: *Waterfield v. Wilber*, 64 M. 642.

177. A bill to establish and enforce a vendor's lien upon lands should set forth the contract of purchase, both as to the consideration and terms of payment; and the allegations with respect thereto should be clearly proved, in order that the court may compel the execution of the agreement of the parties, and not one of its own creation: *Mowrey v. Vandling*, 9 M. 39; *Dunton v. Outhouse*, 64 M. 419; *Waterfield v. Wilber*, 64 M. 642.

178. A joint bill to enforce a vendor's lien cannot be sustained where it appears that complainants are not joint owners, and that the contract of purchase is entire, no part being apportioned to the respective owners, and there being no evidence of the relative value of each parcel at the time of the sale: *Waterfield v. Wilber*, 64 M. 642.

179. Evidence that the vendee was to work out the unpaid portion of the purchase price will not sustain a bill which alleges a sale for a certain price, but does not state what mode of payment was agreed upon. And if the evidence were proper, the lien could not be enforced until a breach of the contract was shown by defendant's refusal to pay in labor: *Mowrey v. Vandling*, 9 M. 39.

180. The vendor's lien upon land sold for the unpaid purchase money exists, generally speaking, and the burden of proof is on the purchaser to establish that in the particular case it has been intentionally displaced by consent of parties: *Sears v. Smith*, 2 M. 243; *Dunton v. Outhouse*, 64 M. 419.

181. A vendor's lien being in the nature of an equitable mortgage cannot be strictly foreclosed; there must be a sale: *Fitzhugh v. Maxwell*, 34 M. 138.

182. Decree should allow defendant to purchase at the sale, should ascertain the indebtedness to be paid, and should direct the surplus, deducting such payment and above costs and expenses, to be paid to complainant: *Johnson v. Fowler*, 68 M. 1.

183. Where, upon a bill to rescind, it appeared that complainant's conduct had been such as to preclude him from that form of relief, but the facts set forth showed that he was entitled to a lien as vendor, such lien was established under the prayer for general relief: *Merrill v. Wilson*, 66 M. 232.

·VI. VENDEE'S LIEN.

184. A vendee who has paid the purchase money prematurely has a lien as against the vendor analogous to that of a vendor against a vendee who has not paid: *Payne v. Atterbury*, H. 414.

VII. RIGHTS, DUTIES, LIABILITIES, ETC., OF OTHERS THAN ORIGINAL PARTIES.

185. An assignment of a land contract held to be a forgery: *Day v. Cole*, 65 M. 129.

186. A vendor who takes from a vendee a surrender of his contract takes it subject to all the obligations assumed by the latter to third parties, and is obliged to perform his vendee's contracts with such parties: *Woodward v. Clark*, 15 M. 104.

187. One who purchases the title or rights of the vendors in a land contract, with knowledge of the vendees' equities, becomes liable to the same extent and in the same manner as those from whom he bought: *Converse v. Blumrich*, 14 M. 109.

188. One who received an assignment of the vendor's interest and had recognized the vendee's rights afterwards made a resale of the same property to the vendee at a higher price, and took back a mortgage for part of the purchase price. Held, that the new arrangement was void for want of consideration, and the mortgage could not be enforced: *Ibid.*

189. Surrender by vendee without wife's consent invalid where homestead right involved: *McKee v. Wilcox*, 11 M. 858.

190. If a purchaser has in good faith surrendered the contract for cancellation and the inchoate rights of third persons are protected, a subsequent levy upon the land under an execution against him will fail. But any conveyance of his interest must be subject to any lien of third persons thereon already obtained: *Welsh v. Richards*, 41 M. 598.

191. Where a vendor, covenanting against encumbrances, pays his vendee money expressly to take up an outstanding mortgage, the vendee is a trustee for the benefit of his own subsequent purchasers taking under similar covenants, and must apply the money in their favor; otherwise he is liable as for money had and received to any one of the latter who redeems in his stead: *Twitchell v. Drury*, 25 M. 398.

192. The statute of frauds does not require a vendee's agreement to pay the purchase money for land to be written to enable him to contract to sell the land again. It is there-

fore of no consequence, so far as such a contract is concerned, whether the vendee could have enforced his rights in the land as against his vendor or not; and the vendee's grantee is not concerned in dealings between the vendee and his vendor as to what the former shall receive out of any money to be paid for the land: *Burke v. Wilber*, 42 M. 327.

193. One who takes conveyance knowing that timber has been sold to another with indefinite term for removal is liable if he cuts timber without giving notice to remove in reasonable time: *Wood v. Elliott*, 51 M. 320.

194. Where one who has sold standing timber to be taken off in three years conveys the land, reserving the timber absolutely, he may extend the contract time for taking off the timber, but cannot do so indefinitely to his grantee's prejudice: *Haskell v. Ayres*, 85 M. 89.

195. Possession of land by a contract purchaser is constructive notice of his rights: *Woodward v. Clark*, 15 M. 104; *Russell v. Sweeney*, 22 M. 235; *Farwell v. Johnston*, 84 M. 342. See, also, NOTICE, I, (c).

196. Rights conferred by a land contract cannot, as against one in full possession under it, be affected by errors of description whereby deeds from the same grantor to subsequent purchasers are made to cover portions of the same land: *Seager v. Cooley*, 44 M. 14.

197. Where a deed is given in pursuance of a land contract it is presumed to secure and perpetuate all rights conferred by the contract, and an intermediate conflicting deed given by the same grantor has no priority against a vendee in possession: *Ibid.*

And see INJUNCTIONS, § 87.

WAIVER.

See ESTOPPEL.

1. There can be no waiver without knowledge of the defect waived: *Waldron v. Murphy*, 40 M. 668.

2. Waiver implies the right to object: *English v. Franklin F. Ins. Co.*, 55 M. 278.

3. Waiver is voluntary, and implies an election to dispense with something of value, or to forego some advantage which the party waiving it might at his option have demanded or insisted upon: *Warren v. Crane*, 50 M. 300.

4. The question of waiver is one of intent, and is a proper subject of inference from surrounding circumstances: *Hibernia Ins. Co. v. O'Connor*, 29 M. 241.

5. A waiver may be proved by circumstances as well as by direct testimony: *Cobbs*

v. *Philadelphia Fire Assoc.*, 68 M. 463 (Feb. 2, '88).

6. A waiver of a legal right is not to be implied from slight circumstances: *Bird v. Hamilton*, W. 381.

7. Evidence of the waiver of stipulated rights should be explicit: *Gault v. Van Zile*, 87 M. 22.

8. Waiver of a forfeiture will be assumed on slight evidence if equity requires: *Lyon v. Travelers' Ins. Co.*, 55 M. 142.

9. Waiver by delay of the right to sue is one of fact and not of law in all cases that are not within the statute of limitations: *Dayton v. Monroe*, 47 M. 198.

10. A waiver cannot renew an estate that has expired by limitation: *Grand Rapids Bridge Co. v. Prange*, 35 M. 400.

11. By asserting a valid ground of defence one does not waive reliance on a different one that is equally valid and consistent with it: *Vanneter v. Crosseman*, 89 M. 610.

As to WAIVER in particular cases, see that heading in the Index.

WASTE.

I. WHAT CONSTITUTES; WHO LIABLE.

II. REMEDIES FOR WASTE.

I. WHAT CONSTITUTES; WHO LIABLE.

1. In this state it is not waste for a tenant to clear wild lands of their timber: *Campbell's Appeal*, 2 D. 141.

2. The cutting of timber into cord-wood by a tenant holding over after his lessor's death held waste under the circumstances of the case: *Howard v. Patrick*, 88 M. 795.

3. A tenant impliedly covenants to use the farm in a husbandman-like manner, and not to exhaust the soil by improper tillage; and it is waste for an outgoing tenant to plough up all the meadow land on a farm of 200 acres: *Chapel v. Hull*, 60 M. 167.

4. Taking ore from open mines on premises sold on execution during the period after sale in which the execution debtor is allowed to hold possession is not necessarily waste on such debtor's part: *Ward v. Carp River Iron Co.*, 47 M. 65, 50 M. 522. As to sales of ore so mined, see *Ibid*.

5. A life-tenant is bound to keep the premises in repair and must not commit waste: *Curtis v. Fowler*, 66 M. 696.

6. Tenants for life not made punishable for waste by the person granting the estate are liable for both commissive and permissive waste: *Stevens v. Rose*, 69 M. 259.

7. A life-tenant punishable for waste can do all reasonable acts consistent with the preservation of the estate which would otherwise by law be waste; but he may not maliciously injure the estate, as by demolishing buildings that are a part of the freehold, or by cutting down fruit, ornamental or shade trees: *Ibid*.

8. A life-tenant—even though her estate arose by act of law—who has granted her estate absolutely to a third party without retaining possession is not liable for waste committed by her assignee: *Beers v. Beers*, 21 M. 464.

9. One holding over as against his own deed is not liable for permissive waste or for means profits: *Payne v. Atterbury*, H. 414.

II. REMEDIES.

10. For waste the proper remedy under our statute is an action on the case. And the action may be maintained by a landlord against the assignee of the lessee: *Lee v. Payne*, 4 M. 106.

11. Such action cannot be maintained against a tenant for life for waste committed by his assignee after such tenant has parted with all his estate and is out of possession; the action is regulated by H. S. §§ 7940, 7941: *Beers v. Beers*, 21 M. 464.

12. The reversioner, not the administrator, is entitled to recover for waste committed by a tenant or by any person in wrongfully cutting timber: *Howard v. Patrick*, 38 M. 795.

13. In case of waste by tenant for life in bequeathed personalty the testator's personal representatives cannot interfere; the right to complain belongs to those to whom the limitation over is made: *Sutphen v. Ellis*, 35 M. 446.

14. A foreclosure purchaser whose title is perfected by failure to redeem may sue in case for injury done to the estate, maliciously and with knowledge of his rights by the cutting and carrying away growing timber during the time for redemption: *Stout v. Keyes*, 2 D. 184.

15. So an execution purchaser may maintain an action of trespass on the case for waste committed pending the right to redeem: *Ward v. Carp River Iron Co.*, 47 M. 85.

16. H. S. § 7956 was not intended to curtail the jurisdiction of courts of equity in matters of waste, but is merely in affirmance of their concurrent jurisdiction with courts of law: *Chapel v. Hull*, 60 M. 167.

17. The jurisdiction of chancery will be exercised where a trespass is calculated to do

permanent injury to the freehold: *Ryan v. Brown*, 18 M. 196.

18. Injunction to restrain trespass in the nature of waste was granted to an execution debtor's grantee whose title was held to be prior to that of the execution purchaser: *Drake v. McLean*, 47 M. 103.

And see INJUNCTIONS, §§ 69-71.

19. Where plaintiff in ejectment applied for an order to stay waste, it was held that refusal was discretionary and was not reviewable on *mandamus*. A party entitled to a stay of waste can have no remedy for refusal to grant relief unless he seeks such stay in an affirmative suit at law or in equity: *Parks v. Marquette Circuit Judge*, 38 M. 244.

20. Granting a motion to stay waste is not within the jurisdiction of the supreme court after reversal and order of new trial in ejectment, though before *remittitur*: *Crane v. Reeder*, 23 M. 92.

WATERS.

I. NAVIGABILITY; PUBLIC USE.

II. IMPROVEMENT OF NAVIGATION.

- (a) *In general; corporations; tolls.*
- (b) *Canals; canal companies.*

III. FERRIES.

IV. BRIDGES AND DAMS.

V. HARBORS, WHARVES AND DOCKS.

VI. RIPARIAN RIGHTS.

- (a) *In general.*
- (b) *Ownership on waters; boundaries.*
- (c) *Use of submerged land; ice; fishing and fowling.*
- (d) *Use of water; detention and diversion.*
- (e) *Grants and leases of water-power and flowage rights.*

VII. WRONGFUL FLOODING.

- (a) *In general; actions.*
- (b) *Abatement of dams; compensation for unauthorized flowage.*

VIII. LOG-DRIVING AND BOOMING.

- (a) *Companies; use of stream.*
- (b) *Contracts for driving, etc.; compensation.*
- (c) *Concurrence of floatage and riparian rights; injuries to the latter.*

IX. SURFACE WATER.

X. SUBTERRANEAN WATERS.

XI. WATER COMPANIES; WATER SUPPLY.

Prosecutions for nuisance in maintaining dam, polluting waters, etc., see CRIMES, §§ 646-656.

I. NAVIGABILITY; PUBLIC USE.

1. Navigable waters at the common law are those where the tide ebbs and flows: *Lorman v. Benson*, 8 M. 18; *Attorney-General v. Ewart Booming Co.*, 84 M. 462. But in this country those waters are regarded as navigable in law which are navigable in fact, whether tidal or not: *Lorman v. Benson*, 8 M. 18; *The Daniel Ball*, 10 Wall. (U. S.) 557.

2. The term "navigable waters" as used in H. S. § 9420 (relating to punishment of crimes) is not confined to waters where the tide ebbs and flows: *Tyler v. People*, 8 M. 320.

3. Rivers are navigable when they are used or susceptible of use in their ordinary condition as water highways over which trade and travel are or may be conducted in the customary modes: *The Daniel Ball*, 10 Wall. (U. S.) 557.

4. To render a stream a public highway it need not be susceptible of navigation by boats or vessels. A valuable capacity for floating rafts or logs creates a public easement, leaving the owners of the bed of the stream all other modes of use not inconsistent with it: *Moore v. Sanborn*, 2 M. 519.

5. A stream that is capable of being used in its natural condition for important purposes of navigation, such as floating forest products to market or the place of manufacture, must be regarded as a public highway: *Thunder Bay River Boom. Co. v. Speechly*, 81 M. 386.

6. The fact that a stream having capacity for valuable floatage has not been used by the public, or has only been used by persons following a particular occupation, does not prevent such stream's assuming a public character; in the new states of the Union user cannot, in the nature of things, be necessary to found a public right: *Moore v. Sanborn*, 2 M. 519.

7. And the ordinance of 1787 superseded the common-law doctrine of the necessity of usage or custom to establish a public right in the navigable waters of the northwest territory, even if that rule would otherwise have prevailed there: *Ibid*.

8. The public right is not affected by the fact that the stream has not a capacity for floatage, in its natural and ordinary stage, at all seasons of the year. It is a *valuable*, and not a *continual* capacity for use, which determines the right: *Ibid*.

9. A stream navigable only at certain seasons of the year during periodical stages of high water is to be considered a public highway at those seasons: *Thunder Bay River Boom. Co. v. Speechly*, 81 M. 386.

10. But the possibility of occasional use during annual and brief freshets does not make a stream a public highway: *Ibid*.

11. A stream is not a public highway if it cannot be used as such in its natural condition; nor has an upper riparian proprietor a right to make it such by detaining the water until a flood sufficient for floating logs can be caused, to the prejudice of the proprietor below: *Ibid*.

12. A stream in which, without improvements, no logs can be floated at any season of the year, and in which, even when improved, no logs can be floated without dams, is not navigable in any sense: *East Branch Sturgeon River Improvement Co. v. White, etc. Lumber Co.*, 69 M. 207.

13. The fact that the waters of a stream eventually find their way through the lakes into the St. Lawrence does not bear upon the stream's navigability: *Burroughs v. Whitwam*, 59 M. 279.

14. Public use of a river, after a dam has been built across it, for pleasure-boating or fishing has no tendency to prove navigability, and evidence of such use is inadmissible: *Ibid*.

15. Water may be navigable without a current, and water having a current is not necessarily navigable: *Turner v. Holland*, 65 M. 458.

16. The Grand river is navigable water of the United States from its mouth in Lake Michigan to Grand Rapids: *The Daniel Ball*, 10 Wall. (U. S.) 557.

17. Thunder Bay river is a public highway for the purpose of running logs: *Thunder Bay River Boom. Co. v. Speechly*, 81 M. 886.

18. The Emerson bayou, an inlet of the Saginaw river, which has a depth of from six to nine feet, and which is capable of use and is occasionally used by vessels, is, it seems, navigable water: *Turner v. Holland*, 65 M. 458.

19. The Thread river, a crooked and shallow stream never used for travel or transportation, or for the floating of logs, and abounding in "rapids" where the depth of water — except in short periods of high water — is not more than five or six inches, is not navigable: *Burroughs v. Whitwam*, 59 M. 279.

20. Navigable waters are public highways at common law: *La Plaisance Bay Harbor Co. v. Monroe*, W. 155; *Lorman v. Benson*, 8 M. 18. And the use thereof is equally open to all persons: *Butterfield v. Gilchrist*, 53 M. 22. The difference between land and water highways indicated: *Attorney-General v. Ewart Booming Co.*, 34 M. 462.

As to the use of streams for log-driving and booming, see *infra*, VIII.

As to use of improvements, see *infra*, II.

As to use of canals, see *infra*, §§ 36, 37.

As to the nature of the public easement of navigation, see EASEMENTS, § 2.

That actions for obstructing navigable streams are transitory, see ACTIONS, § 34.

Costs on judgment for obstructing stream, see COSTS, § 49.

II. IMPROVEMENT OF NAVIGATION.

(a) *In general; corporations; tolls.*

21. The public authorities can regulate and improve water highways as well as land ones, though the soil of neither belongs to the state: *Lorman v. Benson*, 8 M. 18. However, Const., art. 14, § 9, precludes the state from itself engaging in the work of improving its navigable waters: *Ryerson v. Utley*, 16 M. 269; *Benjamin v. Manistee River Imp. Co.*, 49 M. 628; *Watts v. Tittabawassee Boom Co.*, 52 M. 203; *Manistee, etc. Co. v. Sands*, 53 M. 598; *Anderson v. Hill*, 54 M. 478; *Wilcox v. Paddock*, 65 M. 23.

22. But the state may authorize the improvement of such waters by corporations: *La Plaisance Bay Harbor Co. v. Monroe*, W. 155; *Benjamin v. Manistee, etc. Co.*, 42 M. 628; *Nelson v. Sheboygan Nav. Co.*, 44 M. 7; *Watts v. Tittabawassee Boom Co.*, 52 M. 203; *Manistee, etc. Co. v. Sands*, 53 M. 598, 128 U. S. 288.

23. And it may grant swamp lands to aid in improving the channel of a stream: *Sparrow v. State Land Office Commissioner*, 56 M. 567.

24. Unless compensation is made riparian rights cannot be taken for the purpose of making a stream that is only periodically navigable a public highway at all times: *Thunder Bay River Booming Co. v. Speechly*, 81 M. 886.

25. H. S. ch. 111 contemplates the improvement of navigable rivers, not the creation of navigable rivers from streams not naturally navigable: *Clay v. Pennoyer Creek Imp. Co.*, 34 M. 204.

26. And as said statute does not contemplate the incorporation of companies to improve any but navigable streams, a company organized thereunder cannot subject the lands of other persons on a non-navigable stream to any easement or right of flowage: *East Branch Sturgeon River Imp. Co. v. White, etc. Lumber Co.*, 69 M. 207.

27. That the act of 1869, prior to its amendment (see H. S. § 3849), was fatally defective in its provisions (adopted by reference to the plank-road act) relating to the inquiry before commissioners and the duties of such com-

missioners in condemnation proceedings, see *Clark v. Pennoyer Creek Imp. Co.*, 34 M. 204.

28. In condemnation proceedings where a river is to be improved the petition is jurisdictional and must set forth all the facts necessary to show that the petitioning corporation is authorized to make the proposed improvement and has taken all the necessary preliminary steps: *Ibid.*

29. Where such a petition avers that the stream is navigable and that the improvements include dams, it must not only allege that the assent of the governor and attorney-general and the approval of the canal board have been procured, but also that authority has been obtained from the board of supervisors to dam the stream (Const., art. 18, § 4): *Ibid.*

30. An application, under act 94 of 1885, for the appointment of a special commissioner to superintend the improvement of Maple river, was held void because it failed to show — in compliance with the provisions of the act — of what townships the petitioners were residents, and because it was executed before the statute was passed: *Wilcox v. Paddock*, 65 M. 28.

31. Incorporation under H. S. § 3845 of a company to improve a navigable stream, and approval by the canal board of such company's application, cannot legalize previous unauthorized improvement and possession of the stream: *East Branch Sturgeon River Imp. Co. v. White, etc. Lumber Co.*, 69 M. 207 (April 6, '88).

32. In proceedings by *quo warranto* against a corporation authorized by law to deepen the channel of a river, it pleaded that it had removed obstructions by cutting channels through jams, and by confining the water at various points. Held, on demurrer, that it could not be said as matter of law that this was not an exercise of the power given to deepen the channel: *Benjamin v. Manistee River Imp. Co.*, 42 M. 628.

Statute for incorporation of slack-water navigation companies in certain counties held valid, see CONSTITUTIONS, § 497.

33. Corporations organized to improve navigable streams may be empowered to charge tolls at rates fixed by the legislature or by a board of control: *Benjamin v. Manistee River Imp. Co.*, 42 M. 628; *Nelson v. Cheboygan Nav. Co.*, 44 M. 7; *Manistee River Imp. Co. v. Sands*, 53 M. 593 (affirmed, 123 U. S. 288). But, it seems, such corporations cannot be empowered to charge toll at their own discretion: 44 M. 7.

34. The statute (H. S. ch. 111) empowering

the board of control of the St. Mary's Falls ship canal to fix the rates of toll to be charged by the river improvement companies sustained; fixing such rates is not a judicial act, and the statute is not objectionable for not requiring a hearing and notice to parties interested; and the annual affidavit required to be filed by each company (H. S. § 3859) does not preclude the board from using its own methods of getting information: *Benjamin v. Manistee River Imp. Co.*, 42 M. 628.

35. The action of said board of control in fixing tolls is not reviewable in the courts: *Ibid.*; *Manistee River Imp. Co. v. Lamport*, 49 M. 442. Hence, in an action to recover such tolls as fixed, the courts cannot assume jurisdiction to decide that the tolls are excessive or that the board was imposed upon — as by false testimony — in fixing them: 49 M. 442.

Who bound to discharge lien for tolls, see *infra*, § 196.

(b) Canals; canal companies.

36. A canal through a marsh in which a stream is lost, cut by private individuals through the land of one of them, for the purpose of affording floatage for timber and lumber through the same in connection with the stream — there being no evidence that the waters of the stream ever ran along its line, or that it was the improvement of an existing water channel — is a *private* way, and the public are not entitled to use it unless it be dedicated to their use: *Ward v. Warner*, 8 M. 508.

37. The Sault Ste Marie canal is an independent water-way, like a turnpike, which can only be used upon such conditions as the state, under the congressional grant, may lawfully impose: *Ryan v. Brown*, 18 M. 196.

38. The canal board has such a control over the Sault Ste Marie canal and its approaches that it is authorized to remove unlawful obstructions to the legitimate use of the canal; but the board's finding is not conclusive as to illegality, and its interference with private rights may be enjoined: *Ibid.*

39. The right of the Lake Superior Ship Canal, etc., Company, under the legislation of congress and of state legislature to the possession of the Portage ship canal, and to collect tolls, sustained as against the claim of the state as trustee of the United States: *Attorney-General v. Lake Superior Ship Canal, etc. Co.*, 32 M. 233.

39a. A trust for the United States in the possession of the state was not created by the

provision in the act of congress requiring the canal to be a public highway free of toll for United States vessels, or by the provision limiting the tolls that should be imposed after reimbursement: *Ibid*.

40. The action of the state fixed a contract right in said company with the right of possession, and it is not competent for the state to violate its contract and to assume to manage the canal—a work of internal improvement—for itself; but the act of 1878 (H. S. §§ 5503-5516), constituting a board of control, etc., does not undertake to do this: *Ibid*.

41. The duty imposed upon the governor of this state by the act of congress making a land grant for the construction of the Portage Lake & Lake Superior ship canal and harbor, and by the state legislation on the subject, to issue his certificate of the fact when he shall be satisfied that the work has been done in conformity with the law, is not one of a purely ministerial character, leaving him no discretion; and *mandamus* will not lie to compel such issue: *Sutherland v. Governor*, 29 M. 320.

As to grants in aid of canals, see PUBLIC LANDS, §§ 149-151.

Exemption of canal-grant lands from taxation, see TAXES, §§ 146, 147.

As to enforcement of decree in favor of canal and harbor company after franchises have expired, see CORPORATIONS, §§ 269-272.

III. FERRIES.

42. The authority to establish and regulate ferries is not included in the federal power to regulate commerce; a license under the act of congress of a vessel for the coasting and foreign trade does not confer upon it the franchise of a ferry; and the Detroit ordinance prohibiting, under a penalty, the keeping of an unlicensed ferry between the city and the Canadian shore, and charging a license fee, is valid: *Chilvers v. People*, 11 M. 43.

43. Such a license involves the transfer of a valuable franchise, which is a right of property and may be sold where nothing in the charter prevents: *Kitson v. Ann Arbor*, 26 M. 331. The franchise of keeping a rope ferry is property, valuable and transferable, and forfeiture of such a franchise can only be determined in a direct proceeding, not collaterally: *Billings v. Breinig*, 45 M. 65.

IV. BRIDGES AND DAMS.

44. Const., art. 18, § 4, prohibiting the bridging or damming of navigable streams unless authorized by the board of supervisors,

does not apply to waters that form part of the state boundary: *Ryan v. Brown*, 18 M. 196. Or to streams that have no naturally valuable capacity for floatage purposes: *Shepard v. Gates*, 50 M. 495.

45. The authority conferred upon boards of supervisors to regulate the bridging of navigable streams is a trust that must be executed by themselves; they cannot delegate it to others, especially to parties concerned in any details requiring the exercise of their judgment, such as the location or character of the bridge: *Maxwell v. Bay City Bridge Co.*, 41 M. 453.

46. Boards of supervisors have no jurisdiction to act upon petitions for leave to bridge navigable streams, unless the petitions comply with H. S. §§ 493-495. Such a petition must specify the proposed location of the bridge with reasonable precision; this may depend largely on the extent of the commercial interests that may be involved in the location, and the convenience of the public; greater particularity would be needed if the bridge is to be built where there is a town than where there is not. The petition must also describe the bridge with particularity; as by indicating the location of the draws: *Ibid*.

47. Where the legislature legalizes rates of toll fixed by a board of supervisors for the use of a bridge previously erected without authority of law, the action of the two bodies precludes the public from questioning the legality of the bridge; but such action does not cut off an existing claim for damages arising from the establishment of such bridge: *Maxwell v. Bay City Bridge Co.*, 46 M. 278.

48. If even a lawful bridge or pier is constructed so near to a riparian owner's dock as to preclude its profitable use or to inconvenience its use, he is entitled to compensation: *Ibid*.

As to estoppel against grantee of petitioner for bridge from claiming damages, see ESTOPPEL, § 256.

As to pleading in action for appropriating land for pier of bridge, see PLEADINGS, § 536.

49. The assent of the supervisors of the county being essential to the right to construct or maintain a toll-bridge over a navigable stream, and such board being also the competent authority to fix the rate of tolls, a corporation organized to build a toll-bridge over such a stream which has obtained assent by resolution of the board of supervisors "to erect, rebuild, repair and keep up and use, for its sole use and profit, a toll-bridge," etc., "for the term of twenty years," the tolls being fixed by the board at the same time, has no

authority after the expiration of the twenty years to enforce the payment of tolls, notwithstanding the corporation was organized for the period of thirty years, for the purpose of building this bridge, in pursuance of a statute authorizing it: *Grand Rapids Bridge Co. v. Prange*, 35 M. 400.

50. As the franchise of taking tolls is distinct from the corporate franchise of the company that takes them, and is not conferred by a direct grant from the state, but from the board of supervisors, the estate of the corporation in it ceases with the expiration of the period to which it was expressly limited by the grant, and the state's omission to institute proceedings to dissolve the corporation can have no force to continue this franchise or restore it to life: *Ibid.*

51. The forfeiture of a corporate franchise cannot be collaterally taken advantage of in a private action; but one who is sued for bridge tolls by a corporation may defend on the ground that the period of assent by the supervisors to the exercise by the corporation of the franchise of taking tolls has expired; for this is not a question of corporate existence. The franchise to be a corporation may continue to exist, though any particular franchise annexed to it may have been surrendered or forfeited: *Ibid.*

As to bridges over mill-races, see HIGHWAYS, §§ 86-89; CITIES, ETC., § 17.

Further as to BRIDGES, see that heading in the Index.

52. As Const., art. 18, § 4, forbids the damming of navigable streams except by authority of the board of supervisors, a petition under act 196 of 1873 (revising and amending C. L. 1871, ch. 221) to condemn lands for the erection of a dam for mill purposes must show whether the stream is navigable or not, and, if navigable, that the requisite permission has been obtained: *Fox v. Holcomb*, 34 M. 298.

53. The petition in such case is jurisdictional, and must allege every fact necessary to entitle the petitioners to make the alleged improvement: *Ibid.*

54. It must show affirmatively that the proposed dam will not injure any mill or mill-site above or below on the same stream: *Ibid.*

That the necessity for the taking must be passed upon, see CONSTITUTIONS, § 253.

That said statute of 1873 is invalid, see CONSTITUTIONS, § 254.

That authority from supervisors must be shown in petition to condemn land for improving navigable stream by damming, see *supra*, § 29.

55. The rights of the public in the use of internal water-ways for the floatage of logs are subject to the determination of the supervisors, who may, in the manner fixed by law, permit dams to be built according to such plans as they approve, and the public use is limited by these conditions and cannot be described as a right to the use of the water in its natural flow: *Wood v. Rice*, 24 M. 423.

56. A petition to the board of supervisors, under H. S. § 494, for leave to dam a stream and construct in connection therewith a shute or apron for the passage of rafts, but containing no description whatever of said shute or apron, is fatally defective and would not give the board jurisdiction to act. The petition must set forth in detail the whole plan of the proposed dam, and the capacity and character of any shute or passage to be constructed therein: *Powers v. Irish*, 28 M. 429.

57. The record of the proceedings of a board of supervisors upon a defective petition for leave to dam a stream would not be admissible to show that the dam was lawfully built in an action for damages for injuries caused by unlawfully obstructing the stream by a dam erected under such proceedings: *Ibid.*

58. Action taken by a board of supervisors permitting the erection of a dam across a navigable stream is no notice of the petitioners' intention to avail themselves of it for the purpose of flooding another's land: *Stone v. Roscommon Lumber Co.*, 59 M. 24.

59. No one can lawfully complain of such an obstruction or interference with a water-course as has been permitted in conformity to law by the consent of the proper authorities: *Wood v. Rice*, 24 M. 423.

60. A declaration averring damages from such an obstruction of a navigable stream by means of a dam as hinders the natural flow of the stream and prevents the running of lumber from plaintiff's mill will not support a claim for damages arising from building a dam lawfully authorized in such a manner as to exceed the authority and make the obstruction greater than it should have been. The injury complained of should have been averred as arising from the dam's excess or insufficiency: *Ibid.*

Damages to individual from obstruction of public stream by unauthorized dam, see DAMAGES, §§ 45, 61.

Malicious injury to dam, see CRIMES, § 855.

As to flooding by unauthorized dams, and abatement of such dams, see *infra*, VII.

Prosecutions for nuisance in maintaining dam, see CRIMES, §§ 646-649, 651, 656.

V. HARBORS, WHARVES AND DOCKS.

61. The Grand river at a point three miles up from its mouth is not a harbor in the common-law sense or within the meaning of the statutes regulating fisheries; and the common council of Spring Lake has no power to establish harbor lines in said river: *People v. Kirsch*, 67 M. 539.

As to harbor regulations and powers of harbor-master of Detroit, see SHIPPING, §§ 3-5.

62. A city has a right to build a wharf for public purposes where any street that has been duly dedicated to the public abuts upon a public stream, without regard to the question whether the bank-owner has the title to the land under the water to the middle of the stream: *Backus v. Detroit*, 49 M. 110.

63. Ownership of a water lot abutting on a street gives one no rights in or control of the wharf at the extremity of such street: *Scott v. Layng*, 59 M. 43.

64. Public wharves are not subject to indiscriminate public use like highways: *Horn v. People*, 26 M. 221.

65. The wharves of Detroit, whether terminating highways or not, are not highways but private property, and where they are owned by the city may be leased, like other corporate property, to private lessees. The title is proprietary and not a public easement: *Ibid.*

66. And as the city may lease a wharf at the end of one of its streets, it can, it seems, lease a strip at the foot of the wharf for the purpose of a floating boat-house: *Scott v. Layng*, 59 M. 43.

67. Protection to private wharves from encroachments is to be sought from the general laws of the land; city ordinances cannot be passed for the purpose: *Horn v. People*, 26 M. 221.

68. The right of the public for purposes of navigation must be considered as appurtenant to the ordinary means of navigation rather than to small and insignificant boats, and it is no nuisance to erect wharves and similar improvements unless under exceptional circumstances, such as narrows, bends, etc.: *Ryan v. Brown*, 18 M. 196.

69. The construction of wharves may, it seems, be limited by the state to the line of navigability; but this is rarely done except under peculiar circumstances: *Attorney-General v. Evert Booming Co.*, 34 M. 462.

70. The right of docking must not seriously impair the right of navigation: *Bay City Gas Light Co. v. Industrial Works*, 28 M. 182.

VI. RIPARIAN RIGHTS.

(a) *In general.*

As to wrongful flooding, see *infra*, VII.

As to relative rights of riparians and of log-drivers, etc., and as to injuries to former from operations of latter, see *infra*, VIII, (c).

71. A current is not essential to the existence of riparian rights. They may exist in lakes or ponds where there is no current, and they may exist where the waters are not capable of navigation: *Turner v. Holland*, 65 M. 453.

72. The ordinance of 1787 and the act admitting Michigan into the Union leave riparian rights in navigable waters to be settled according to the principles of the state law: *Webber v. Pere Marquette Boom Co.*, 62 M. 626.

73. The principles governing the rights of riparian proprietors do not apply to a grant where no part of the land described is bounded by a lake or other water: *Palmer v. Dodd*, 64 M. 474.

74. Agreements between joint riparian owners, after making conveyance, cannot affect the grantee's rights, nor can deeds made in pursuance of such agreements: *Fletcher v. Thunder Bay River Boom Co.*, 51 M. 277.

(b) *Ownership on waters; boundaries.*

75. In Michigan the title of the riparian owner is not limited to the bank but extends to the middle line of the stream or inland lake; the soil under navigable water is not regarded as belonging to the federal government or to the state: *Lorman v. Benson*, 8 M. 18 (overruling, on this point, *La Plaisance Bay Harbor Co. v. Monroe*, W. 155); *Rice v. Ruddiman*, 10 M. 125; *Ryan v. Brown*, 18 M. 196; *Bay City Gas Light Co. v. Industrial Works*, 28 M. 182; *Maxwell v. Bay City Bridge Co.*, 41 M. 453; *Webber v. Pere Marquette Boom Co.*, 62 M. 626; *Clute v. Fisher*, 65 M. 48; *Bigelow v. Shaw*, 65 M. 341. See *Backus v. Detroit*, 49 M. 110.

76. So held in regard to the Detroit river: *Lorman v. Benson*, 8 M. 18.

77. The ownership of lands bordering upon a stream extends over the bed to the middle of such stream when it is a river. Any erection which can lawfully be made in the water within those lines belongs to the riparian estate: *Ryan v. Brown*, 18 M. 196.

78. The state has no proprietorship in the soil under a small stream that is navigable only in a modified sense for floating logs and lumber; and, presumably, the riparian owner

owns to the center of the stream, subject to the public easement of passage: *Attorney-General v. Evart Booming Co.*, 34 M. 462.

79. The proprietor of lands bordering on a meandered stream owns to the center of the stream, and in platting his lands may plat up to the channel bank: *Twogood v. Hoyt*, 42 M. 609.

80. Private ownership of lands bounded on navigable fresh waters is not restricted to the meander line; and even if the owner of the bank did not also own land made within the meander line it would not belong to the United States, but to the state, which always concedes the right of the owner to the shore: *Pere Marquette Boom Co. v. Adams*, 44 M. 408.

81. Riparian rights upon the great lakes are, in theory, the same as upon navigable streams, and are not governed by any such proprietary division as high and low-water mark. The submerged lands are appurtenant to the upland so far as their limits can be reasonably identified; but in public waters the state law must determine how far rights in such lands can be exercised consistently with the easement of navigation: *Lincoln v. Davis*, 53 M. 375.

82. The owner of a fractional section or fractional subdivision of a section meandered by the United States survey along the margin of an inland lake, navigable or otherwise, owns so much of the bed of the lake as lies within the lines of his fractional subdivision extended into the lake to the limit of the entire subdivision: *Clute v. Fisher*, 65 M. 48.

83. In case of a lake so large that the lines of the sections or subdivisions of sections held by the proprietors of the lands adjoining or surrounding the lake, if extended, do not embrace the whole of the lake, then the rule of riparian ownership may be extended to the center of the lake, so far as the submerged lands can reasonably be identified with reference to the upland: *Ibid.*

84. The ownership of land bordering on Lake Muskegon carries with it the ownership of the land under the shallow water so far out as it is susceptible of beneficial private use, but subordinate to the paramount public right of navigation and the other public rights incident thereto: *Rice v. Ruddiman*, 10 M. 125.

85. If the water continues so shallow as to render the lands under it susceptible of beneficial private use to the center line of the lake the riparian ownership extends to such center line, unless there are intervening islands which the government has shown an intention to reserve from the grant of the mainland by surveying them as separate tracts, in

which case the riparian ownership would extend only to the center line between the island and the mainland: *Ibid.*

86. Islands are susceptible of separate ownership, and where so separated the *filum aquæ* is to be drawn between them and the mainland: *Lorman v. Benson*, 8 M. 18.

87. The rights of riparian owners to half of the bed of the stream is not limited by a mere sand-bar or shallow place exposed only when the wind is favorable or the water low. Whether they are not affected by an actual island in the stream, *quere*: *Watson v. Peters*, 26 M. 508.

88. A lot bordering upon an inland lake was conveyed by the United States by patent. Afterwards a submerged fen within the limits of the patentee's riparian ownership was surveyed as an island under instructions from the federal land office, and was conveyed by patent to another. *Held*, that the later patent gave no title: *Webber v. Pere Marquette Boom Co.*, 62 M. 626.

89. A grant of land bounded on a stream carries with it the bed of the stream to the center, unless a contrary intention clearly appears from the conveyance itself: *Norris v. Hill*, 1 M. 202.

90. Unless the contrary clearly appears a grant of land bounded by a water-course conveys riparian rights: *Richardson v. Prentiss*, 48 M. 88. So, on a lake or bay: *Ibid.*

91. The grant of a city lot bounded on a navigable stream with the water as a boundary conveys, in the absence of any express reservation, the land under the water to the middle of the stream; and the fact that the grantor, before conveying, platted the lands into lots and blocks, with distinct lines and distances marking the boundaries of each lot, and with the water boundary of the river lots indicated by a line representing the shore, and then conveyed according to the plat, will not limit the grant to the shore line, or operate to reserve to him proprietary rights in front of the lots conveyed: *Watson v. Peters*, 26 M. 508.

92. Riparian rights, unless expressly limited, extend to the middle of the navigable channel, and cover any shallows or middle ground not shown in the government surveys, but lying between such channel and the shore; and it makes no difference that the deed conveying the premises to which the rights attach describes them according to a city plat instead of the government survey: *Fletcher v. Thunder Bay River Boom Co.*, 51 M. 277.

93. Where, in platting land, the proprietor bounds his lots upon a bayou, and conveys by

number the lots so bounded, without indicating an intention of reserving the bayou as private property or restricting purchasers of lots to the margin of the water, the grantees take the riparian rights incident to the ownership of the shore: *Turner v. Holland*, 65 M. 458.

94. And the fact that in the plat the length of the lines of the lots bordering on the bayou are given in feet and decimals of a foot does not indicate an intention to limit the lot to the length of the line specified. A dedication by plat is to be construed by the same rules that apply in construing conveyances from one individual to another; and the rule that courses and distances give way to natural boundaries applies: *Ibid*.

95. A deed describing the land by a boundary running to a stream and thence along its bank, and reserving the right of using the river in front for a specified time, conveys the land to the water's edge and covers the riparian rights to the middle of the stream: *Cole v. Wells*, 49 M. 450.

96. A bill in equity claimed riparian rights upon a bayou and title to the middle of its channel. These facts being admitted by general demurrer, it was held that complainant could maintain his bill for relief against his grantor if the latter asserted title to the bayou, and so obstructed it by filling it with saw-logs as a booming ground that the riparian grantee was excluded from it: *Turner v. Holland*, 54 M. 800.

97. Location of land conveyed determined where the waters of a lake covering part of such land had been gradually receding for a long time after the conveyance (see CONVEYANCES, § 297): *Verplank v. Hall*, 27 M. 79.

98. The boundary between adjoining riparian owners is to be determined by extending a line from the boundary at the shore at right angles to the general course of the stream at that point: *Clark v. Campau*, 19 M. 325.

99. The boundary lines of water lots fronting upon a river in such a manner that their side lines strike the shore at right angles with the middle thread of the stream, but at a different angle with the shore, extend into the river at right angles with the thread of the stream without reference to the shape of the shore; and in this respect there is no distinction between streams that are subject to easements of passage and those that are not: *Bay City Gas Light Co. v. Industrial Works*, 28 M. 182.

100. Where city authorities, acting under the charter, have fixed a docking line which is not parallel either with the thread of the

stream or with the bank, such line has no bearing on the determination of boundaries: *Ibid*.

(c) *Use of submerged land; ice; fishing and fowling.*

101. Any use of lands under rivers that is compatible with the full enjoyment of the public easement belongs with the upland to which it originally appertained, unless sold or granted separately so as to sever it: *Bay City Gas Light Co. v. Industrial Works*, 28 M. 182.

102. But the state can forbid any erections in navigable waters; and on navigable streams and along the great lakes can fix the distance beyond which private erections cannot be maintained: *Lincoln v. Davis*, 53 M. 375.

103. And even in a stream not susceptible of public use, riparian owners can seldom occupy by erections any large portion of its bed except where it is dammed; each must so use it as not to destroy the benefit of the water to his neighbors: *Bay City Gas-Light Co. v. Industrial Works*, 28 M. 182.

104. In the case of natural water-courses, the extent to which private improvements are compatible with the public use must depend upon circumstances, and is a question of fact. The owner's use is *prima facie* lawful: *Ryan v. Brown*, 18 M. 196.

105. When erections in a navigable stream by the owner of the bed are not encroachments on the ordinary navigation of the stream, the public has no right to remove them for the purpose of opening or improving canal navigation around rapids immediately above: *Ibid*.

106. The private appropriation of a part of the bed of a small stream, not navigable except for floating logs, is neither a purpresture nor a public nuisance of any sort, unless the public use is thereby unreasonably abridged or inconvenienced: *Attorney-General v. Ewart Booming Co.*, 34 M. 462.

107. The owner of the bank is entitled to every beneficial use of the soil under the river which can be exercised with a due regard to the public easement, and any trespass which interferes with such use — like an obstruction which prevents the taking of ice — gives him a right of action for the damages thereby occasioned: *Lorman v. Benson*, 8 M. 18; *Ryan v. Brown*, 18 M. 196.

108. So the owner of the soil under the water of a lake may maintain trespass against one who cuts and removes the ice formed over such soil without his consent: *Clute v. Fisher*, 65 M. 48.

109. The owner of land covered by water is ordinarily the sole owner of ice formed upon such water; and this ownership is not confined to ponds entirely upon his land, but the riparian ownership of the bed of a stream carries with it the right to the ice forming upon the surface of such stream as far as such riparian right extends: *Bigelow v. Shaw*, 65 M. 841.

110. The owner of land which another has the right to flow for mill purposes owns and may gather the ice formed on the water, though he must not appreciably impair the flow for such purposes; and the equity, if any, resulting from the mill-owner's care to preserve the purity and formation of ice does not change the rule: *Ibid*.

111. The right of navigation, though paramount, is not exclusive, and cannot be so exercised as to wantonly destroy private rights or property that can be enjoyed consistently with it; such as the rights to maintain ice fields or stake-nets, or to run logs, or establish boom limits and dock lines: *People's Ice Co. v. The Excelsior*, 44 M. 229.

112. A steamer was run back and forth unnecessarily near a boom enclosing a field of ice that was to be stored for market, and the ice field was thereby destroyed. *Held*, that an action for damages would lie therefor: *Id.*, 43 M. 386, 44 M. 229.

As to the measure of damages, see DAMAGES, § 175.

That ice is personalty, see ICE, § 1.

113. The owner of the surrounding land has a right to the exclusive control of small lakes or ponds within it; and this includes the right of fishing: *Marsh v. Colby*, 39 M. 626.

114. But, in the absence of knowledge of objection, one may be presumed to have a license from the owner to take fish in such lakes or ponds: *Ibid*.

115. Fishing in the great lakes in water remote from the land is a business open to all, and may be carried on even with stakes if not impeding navigation or forbidden by law. A riparian owner cannot object: *Lincoln v. Davis*, 53 M. 375.

116. One who has received a patent from the state of marsh and overflowed lands which subsequently to their grant by congress to the state had become covered with navigable water has the exclusive right to use the same for fowling purposes, although the public has the right of navigation: *Sterling v. Jackson*, 69 M. 488 (April 20, '85).

(d) *Use of water, detention and diversion.*

Easement to take water for mill lost by mill's destruction, see EASEMENTS, § 36.

117. A riparian proprietor has the right to drain his lands through his lands into the adjoining stream; and, unless he has parted with it, he has a right to the use of the stream in its natural flow, and to prevent any such interference with the natural flow as materially injures any of his legal privileges: *Treat v. Bates*, 27 M. 390.

118. Riparian proprietors on the same stream have an equal right to the use of the water, and the right of each qualifies that of all the others; the question as between them is whether the use made of the water by one is reasonable and consistent with a correspondent use by the rest. A fair participation and a reasonable use by each is what the law seeks to protect, and an injury that is incidental to a reasonable enjoyment of the common right can demand no redress: *Dumont v. Kellogg*, 29 M. 420.

119. Every person owning land along a navigable stream is entitled to a fair and reasonable use of its waters; the right is common to all such proprietors; and if such reasonable use by one injures another, the latter has no right of action. But the unreasonable use, detention or diversion of the water is actionable: *Woodin v. Wentworth*, 57 M. 278.

120. A mill-owner is not entitled to protection against incidental injuries or inconveniences arising from the lawful use of the same stream by another mill-owner higher up: *Hoxsie v. Hoxsie*, 38 M. 77.

121. An injunction restraining an upper mill-owner from allowing the water to flow over his dam in quantities greater than is required to run his machinery, but requiring him to allow it to flow into another's mill-pond to the amount of the natural flow of the stream, is erroneous, because it discriminates in favor of the lower owner: *Ibid*.

122. As between riparian proprietors, priority of appropriation of the waters of a running stream which is common to all for the driving of machinery gives one no superior right unless it has been continued for such a period of time and under such circumstances as would be requisite to establish rights by prescription: *Dumont v. Kellogg*, 29 M. 420.

123. As between riparian proprietors whose machinery is driven by the same stream, the question of the wrongful detention of the flowing waters to the prejudice and injury of

proprietors below is essentially different from that of the diversion of the stream from its natural course so as to turn it away from the lower proprietor, and from that of an interference by a stranger to diminish the water, for these acts are wholly wrongful: *Ibid.*

124. One is liable in damages for any such detention of the waters of a navigable stream for the purpose of flooding as prevents a lower owner from getting enough to run his mill if he would otherwise have had enough: *Woodin v. Wentworth*, 57 M. 278.

125. Where, to facilitate the running of logs in a small river, parties built dams in the river and in its tributaries, and diverted water from other sources, thus at times increasing the flow so as to render difficult the use of a mill on the river, also endangering its safety, and at other times diminishing the flow so that the mill could not be used at all, an injunction was granted against adding to or diminishing the natural flow of the river in such a way as to impair the use of the mill or to jeopard its safety: *Koopman v. Blodgett*, 70 M. 610.

126. The legal rights of a riparian proprietor owning a dam and mill-site are not less because the mill has stood idle: *Buchanan v. Grand River, etc. Log R. Co.*, 48 M. 864.

127. Where complainants had orally promised to allow defendants to draw water for running a mill from a certain lake, the outlet of which flowed through complainants' lands, and had suffered them to go on and construct a mill and race at an expense of \$3,000 before informing them that they did not intend to abide by the promise, an injunction which had been granted to restrain the taking of the water of the lake for the mill was dissolved: *Payne v. Paddock*, W. 487.

128. Where complainant had stood by, without objecting, and allowed defendant to go on and expend a considerable amount of money in the erection of a mill, in violation of the terms of a grant made by complainant, in consideration of the erection of the mill, of the right to use the water of a creek in a particular manner, it was held that by his silence he had waived all right to relief in equity, by injunction, against diverting the water: *Jacox v. Clark*, W. 249.

129. It is not unlawful to change the course of a stream within the limits of one's own land, if the stream is returned to its original channel before leaving the land and its flow is not materially diminished: *Pettibone v. Smith*, 87 M. 579. See *Pettibone v. Maclem*, 45 M. 881.

130. When land is conveyed with a reser-

vation of the right to divert a stream so that it shall flow out of the premises, and the use of the water is afterwards granted to subsequent grantees of property on the borders of the stream, to be used in the due enjoyment of the property, but to be returned to the channel above the point of diversion, neither they nor their successors can collect and divert the water for any purposes aside from those connected with their riparian rights above that point, and they may be enjoined from doing so: *Hall v. Ionia*, 88 M. 498.

131. Where complainants were authorized by their charter to erect works, etc., and improve the harbor of La Plaisance bay, held, that the diversion of a river at a point some distance above its mouth, in the bed of which they had no title, which flowed into said bay, and caused a channel to be kept open through it, created no damage for which they were entitled to compensation: *La Plaisance Bay Harbor Co. v. Monroe*, W. 155.

132. The measure of damages for such an interruption of the natural flow of a stream as prevents one from running his mill is what the use of such mill was worth during the period of deprivation: *Woodin v. Wentworth*, 57 M. 278.

(e) *Grants and leases of water-power and flowage rights.*

Requisites of STATUTE OF FRAUDS, see that title, §§ 82, 83, 95.

133. A right to the perpetual use of water need not be dependent on a particular estate with which it is connected, but may be reserved from a conveyance of the land: *Hall v. Ionia*, 88 M. 498.

134. So, the right to use a water-power may be conveyed separately from the land to which it is naturally appurtenant. In a particular case where water privileges had been so conveyed, a subsequent mortgage and foreclosure deed were held to pass no title to them: *Winchell v. Clark*, 68 M. 64.

135. Presumptively the conveyance of a mill and the power therefor includes a dam and race that are the only source of supply, and the foreclosure purchaser of the former may have the prior owner enjoined from meddling with such dam and race: *Curtis v. Norton*, 58 M. 411.

136. A written agreement permitting the establishment of a dam, granting a right of flowage, and providing for a perpetual use and for the settlement of damages, was held to be an irrevocable grant, not a license: *Fitch v. Constantine Hydraulic Co.*, 44 M. 74.

137. Owners in common of land upon which a mill had been situated (then burned down), the power to operate which was obtained by a dam below the premises upon a stream running through them, of which power they were also tenants in common, made partition of their rights, and the mill-site was conveyed to one exclusively. *Held*, that he thereby became entitled to the water-power exclusively, unless a contrary intention clearly appeared from the conveyances: *Manderville v. Comstock*, 9 M. 536.

138. A deed reserving "the right of way for a mill-race," but not fixing the line thereof, does not save the right to authorize more than one race or authorize any change in the site when once established: *Galloway v. Wilder*, 26 M. 97.

139. In granting water-power one may restrict the use thereof to specified purposes: *Manderville v. Comstock*, 9 M. 536.

140. Where a grant of water-power was of a certain number of square inches under a certain head and fall, to be used for "the purposes only of a cabinet shop and the business connected therewith, and also furnace operations," relief as against a change of use was refused in equity because of doubt as to a subsequent removal of the restriction: *Ibid*.

141. While it is competent for grantors to limit the right of flowage to particular purposes, a grant in fee-simple, as a general rule cannot be restricted except by plain conditions: *Hathaway v. Mitchell*, 34 M. 164.

142. A grant of the right to keep up a mill-dam at a specified height, not restricting the use, cannot be confined to the use then presently contemplated; and the fact that the water-power granted is to be immediately used for particular ends is not inconsistent with a change of uses where change is not forbidden: *Ibid*.

143. A grant of "a right of flowage to raise the water in the flume at the mill ten feet head" does not vest in the grantee any right in the land flowed, or in the water itself, but a mere right to raise the water to a certain head at the flume, and thereby overflow the land: *Bigelow v. Shaw*, 65 M. 341.

144. Where a conveyance of water-power estimating that there was sufficient water in the stream for sixteen runs of stone gave the right to take from a mill-race water sufficient for four runs, with the necessary machinery for a grist and flouring mill, "subject to the assessment of its just proportion of all expenses on the dam and mill-race that supplied it with water," *held*, that the just proportion which the grantee should bear of the cost of

repairs would be the proportion which the water to which he was entitled bore to the whole quantity in the river, if all was used, or, if not, to the quantity utilized: *Bradfield v. Dewell*, 48 M. 9.

145. An agreement, properly evidenced, giving the owner of a mill-site the right, for a stipulated annual compensation, to flow the adjoining lands of another for an indefinite period, by the erection of a dam upon his own premises, creates a tenancy in such lands: *Morrill v. Mackman*, 24 M. 279.

146. Water was leased by the following words: "The right and privilege of drawing from the west side of the race now making by the said party of the first part, in Ypsilanti, and leading to his new saw-mill, at any place within sixteen rods of the head-gate of said race, as much water as will run through an aperture of two feet square, under a head of four feet from the top of said aperture, for the use of carrying machinery for iron works, provided so much shall be needed by the said party of the second part for such use." And the lease further provided as follows: That "in case the two feet square of water should not be enough for the use of such iron works as the said party of the second part may hereafter erect near said race, he shall have as much more as shall be necessary for such use, by paying therefor at the same rate as for the two feet square aforesaid;" and also that "in case a sufficient quantity of ore cannot conveniently be procured for carrying on said iron works to advantage, the said two feet square of water may be used for such other machinery as the said party of the second part shall think fit and proper." *Held* that, construing the words of demise by the other parts of the instrument, the lessee was entitled to as much water as would run from the race into a flume conducting it to the iron works, through an aperture two feet square, made in the side of the race, not lower down than four feet below the surface of the water in the race; and not to as much water as would flow through an aperture of the size and under the head mentioned into open space or directly upon the wheel where it was applied: *Norris v. Showerman*, W. 206, 2 D. 16.

147. A covenant in a lease of a dam to pay half "of all tolls and money that may be earned by the use of said dam for driving logs or other purposes" includes any earnings from log-driving that are fairly traceable to the benefits of the dam, and is not confined to tolls: *Rayburn v. Mason Lumber Co.*, 57 M. 273.

148. Rights under a lease of power to an

hydraulic company and the amount of rent to be paid determined in a peculiar case: *Lamb v. Constantine Hydraulic Co.*, 59 M. 597.

Damages where lessor fails to repair flume, see DAMAGES, § 182.

VII. WRONGFUL FLOODING.

(a) *In general; actions.*

As to flooding from log-driving, etc., see *infra*, VIII, (c).

Flooding from surface waters, see *infra*, IX.

149. A lower riparian has no right, either by maintaining a dam or by collecting logs in the river, to raise the water above its usual level so as to set it back upon the upper proprietors and impede the running of their mills: *Richards v. Peter*, 70 M. 286.

150. The fact that annual freshets on a river slightly impede the growth of hay on complainant's lands will not relieve a defendant from liability for erecting a dam in such a manner as to flood said lands, thereby destroying their value for the purposes to which they are best adapted and for which they were purchased: *Stone v. Roscommon Lumber Co.*, 59 M. 24.

151. The prescriptive right to set back water upon another's land by means of a dam depends upon the height to which the water was actually set back during the prescriptive period, and not upon the height to which the water might have been set back if the dam had been tight: *Turner v. Hart*, 71 M. — (July 11, '88).

As to prescription, see, further, EASEMENTS, §§ 25-29.

152. A ditch dug by common consent as a neighborhood drain is to be governed by the rules that apply to other water-courses, and, in an action for damages caused by obstructing it, it is immaterial that it was not legally laid out by the commissioner, or that the parties did not originally agree as to the exact line of the ditch, if they acquiesced in what was done: *Freeman v. Weeks*, 45 M. 835, 48 M. 255.

153. If, however, a person affected by the construction of such ditch did not consent to its being opened, or, shortly after it was opened, claimed and exercised the right of laying a fence in or over the same, causing thereby an obstruction, there would be at most but a limited consent and acquiescence, and if no new act was afterward committed by him, but simply a passive continuance of such obstruction permitted, no action would lie, even though the natural sinking of the

rails would cause a greater obstruction than at first existed: *Freeman v. Weeks*, 48 M. 255.

154. One who maintains a dam and stores logs in the pond formed by it is not liable though in times of freshets the water is thereby set back upon the upper proprietors more than it otherwise would: *Richards v. Peter*, 70 M. 286.

155. In an action for damages for setting back water by means of a dam, thus rendering useless plaintiff's mill, there can be no recovery if it appears that the injury was caused by plaintiff's neglect to use due precautions to prevent it, or by freshets or other causes not in defendant's control: *Ibid*.

156. D., who owned a shingle-mill, allowed refuse to fall therefrom into a stream and to float down to M.'s grist-mill on the same stream, where it obstructed the working of M.'s mill. M. felled trees across the stream on his own land to stop the refuse, thus setting back the water and interfering with D.'s mill. D. sued but was not allowed to recover, as his own unlawful conduct had contributed to the injury: *Davis v. Monro*, 66 M. 485.

157. In an action for damages to land caused by the setting back of water by means of a mill-dam, where the evidence discloses simply that defendant and his grantor of the mill-site for several years before him had flowed the land and paid a yearly compensation therefor, the doctrine of equitable estoppel does not apply in the absence of any showing that the original construction of the dam was in reliance upon any license, or that the course of defendant or his grantor was changed, or any expenditure made in reliance upon any conduct or promise of plaintiff: *Morrill v. Mackman*, 24 M. 279.

158. A. sued B. for overflowing his land by obstructing a ditch. B.'s wife and child were the persons who filled it up, but when A. cut trenches to let off the water, B. himself filled them up again, and asserted his purpose not to let the main ditch be cleared for less than \$1,500. There was also some evidence that he knew where his wife was when she was at work. Held, that the jury was justified in finding him responsible for the mischief: *Enright v. Hartsig*, 46 M. 489.

159. Whether the grantee of land whereon there is a dam erected by the grantor which floods another's land can be sued before he is notified to remove the injury, *quere*; notice once given by the owner of the land flowed inures to the benefit of any one claiming title through or under the person giving the notice: *Caldwell v. Gale*, 11 M. 77.

160. Where, under a parol lease for more

than a year of another's land for the purpose of flowing, the lessee has been put in possession, no action as for damages for unlawful flowing can be brought until the tenancy has been terminated by notice to quit: *Morrill v. Mackman*, 34 M. 279.

161. Where a declaration in a case for flowing land alleged that plaintiff was lawfully seized in fee and possessed of the land flowed, it was held that the whole averment was material and must be proved as laid: *Lull v. Davis*, 1 M. 77.

162. Suit for flowing land, the declaration alleging seizin and possession in plaintiff. On the trial the only evidence of title was possession for about one year previous to bringing the action. It further appeared in evidence that previous to and at the time plaintiff took possession a part of the tract was flowed by defendant. Held that, by reason of defendant's prior possession by flowing that part of the tract covered by water at the time plaintiff took possession, the latter could not sustain his action without showing title in himself to the land flowed, or that he entered and took possession of the tract by color of a paper title: *Millerd v. Reeves*, 1 M. 107.

163. One who seeks damages for the setting back, by means of a dam, of water, whereby his mill is rendered useless, cannot recover damages for a total abandonment of the mill unless it appears that the water was set back for so much of the time as to render it impossible to operate the mill with any degree of profit: *Richards v. Peter*, 70 M. 286.

164. In an action for damages for the wrongful flooding of plaintiff's lands he may show that a part of his orchard was overflowed and that the trees therein withered and died, while those in the other part were alive and thriving; such evidence tends to show that the trees were destroyed by the flooding complained of: *Anderson v. Thunder Bay River Boom Co.*, 61 M. 499.

As to the damages from flowage, see DAMAGES, §§ 173, 174, 287.

Action for subsequent flooding barred with original trespass, see LIMITATION OF ACTIONS, § 63.

That none but the owner of the freehold can recover for the washing away of land, see PARTIES, § 67.

(b) *Abatement of dams; compensation for unauthorized flowage.*

As to abatement as nuisance, see, also, NUISANCE, II.

165. If one's land is injured by the flowage

from an unlawfully erected dam he may abate the dam by pulling it down before the right to maintain it is acquired by adverse user; such a right was not acquired in the case of a dam built in 1868 and torn down in 1892: *Winchell v. Clark*, 68 M. 64.

166. A showing of a subsisting right of flowage for saw-mill or grist-mill purposes will prevent the abatement of a mill-dam erected to supply a paper-mill and causing only the like extent of flowage: *Hathaway v. Mitchell*, 84 M. 164.

167. An injunction to abate a dam which had existed about thirty years, and had been erected under permission to raise the water to a certain height, was denied where the proofs did not conclusively show that the height agreed upon had been exceeded. But as the case contained facts that might properly be submitted to a jury, the denial was without prejudice to any proceedings at law or in equity, if these facts should be found against defendant: *Cobb v. Stimmer*, 45 M. 176.

168. Any dam below which sets back the water of a stream to the injury of a riparian owner is a violation of his rights, and may be made the ground of equitable relief; and where the partial abatement of a dam would prevent the overflow of complainant's land, but its entire abatement was necessary to abate a public nuisance affecting his homestead, complete abatement was decreed: *Treat v. Bates*, 27 M. 890.

169. Upon a bill to enjoin defendant from flooding complainant's lands by means of his dam, where it appeared that in 1881 the dam had been raised and tightened and that since that time three hundred acres of said lands had been flooded and rendered useless, an abatement was decreed and defendant was enjoined from setting back the water to a greater extent than before 1881: *Turner v. Hart*, 71 M. — (July 11, '88).

170. The building of a dam in defiance of a preliminary injunction restraining its erection should not be allowed with impunity: *Stone v. Roscommon Lumber Co.*, 59 M. 21.

171. One who never consented to the building or maintenance of a dam which caused his land to be overflowed, and who did not know of its erection or of the injury it was likely to cause until after it was built, but who, as soon as he had knowledge, prepared to abate and sought to have enjoined the erection of a new dam to take its place when it had worn out, is not barred as by acquiescence from asking relief: *Ibid.*

172. Where the proofs showed a wrongful flowage of complainant's land, but that no

general unhealthiness was caused, and that to enjoin the flowage would practically abate defendant's dam and would injure defendant disproportionately to complainant's grievance, relief was confined to an allowance of damages: *Fox v. Holcomb*, 32 M. 494.

173. C., desiring to increase his water-power, proceeded to acquire rights from various land-owners, but made no agreement with B., whose lands were seriously damaged by the enlarged overflow, but who, during the rebuilding and raising of the dam, made no objection and allowed his minor sons to work for C. on the improvement. *Held*, that B.'s acquiescence would preclude him from relief by injunction for abatement; but, the damage being held to be a continuing one, B. was entitled to a gross sum as full compensation for past and future damage, injunction to issue in default of payment: *Blake v. Cornwell*, 65 M. 467.

174. Defendant having caused a mill-site to be condemned under a statute which they supposed to be valid built a new dam and mill at great expense. Complainant sued for damages for flooding his land, but after an agreement to arbitrate, which, for no apparent reason, he refused to carry out, he dismissed his action, and more than four years after the construction of the dam filed a bill for an injunction, showing no reason for the delay except the pendency of a suit by another party involving the same question. *Held*, that the case was one for pecuniary compensation — which was fixed at \$1,500 for past and future flowage — instead of injunction or abatement; that the decree should not restrict defendants to any particular use of the water-power, if they paid what the decree required, but that the use of flash-boards on the top of the dam should not be allowed, as the testimony in the case related chiefly to the amount of damage caused by the dam without such boards: *Miller v. Cornwell*, 71 M. — (July 11, '88).

VIII. LOG-DRIVING AND BOOMING.

(a) Companies; use of stream.

175. The statute of 1855 (H. S. ch. 113) providing for the formation of companies for running, driving, booming and rafting logs, etc., is valid in so far as it provides for the formation of companies and the power to make contracts, etc.: *Ames v. Port Huron, etc. Co.*, 6 M. 266; *Beard v. Port Huron, etc. Co.*, 11 M. 155.

176. But in so far as it undertakes to authorize such companies to assume, without

any necessity arising from the obstruction of their own business, the control and management of non-consenting parties, and to enforce compensation therefor, it is invalid: *Ames v. Port Huron, etc. Co.*, 11 M. 139.

177. The affidavit of organization to be made by two directors of such a company (H. S. § 3897) must be made strictly according to the terms of said section; and it need not contain any detailed statement of the proceedings had in the formation of the company: *Ames v. Port Huron, etc. Co.*, 6 M. 266.

178. The delivery by a person of a list of his log-marks (H. S. § 3903) to a company formed under H. S. ch. 113 does not operate as a contract for the receiving by the company of all logs so marked that he may have upon the stream within the limits of the company's operations. The object of the provision requiring such list was to entitle the person furnishing it to notice of sale in case, by any casualty, his logs should become so placed as to authorize the company to assume their management: *Ibid*.

179. In the absence of any contract such company is only authorized, by H. S. § 3901, to assume control of the logs of others, and acquire a lien for services in respect thereto, where, by reason of the logs having been put into the stream without adequate provision for running them without obstruction, some obstruction had actually been created: *Ibid*.

180. A company selling logs for charges, etc., cannot itself become the purchaser: *Ames v. Port Huron, etc. Co.*, 11 M. 139.

181. In replevin for logs on which a boom company claims a lien for labor in running them down a particular stream, it is for the plaintiff to show that the company's articles of association did not authorize it to operate in that stream if it did in fact operate there: *Hall v. Tittabawassee Boom Co.*, 51 M. 377.

182. No owner of logs can exclude another from the use of a navigable stream longer than is necessary, if he was first in occupation, to float his logs by the natural current: *Butterfield v. Gilchrist*, 53 M. 22.

183. Individuals driving their own logs have the same rights as log-driving companies in streams that are navigable for that purpose; but if an individual practically concedes the right of a company to regulate the time of letting his logs into the stream, he waives any objection to its customary action in that respect, and if he is not prepared when his logs enter the stream to take care of them, he cannot complain if they become intermingled with the logs of the company and subject to its control, which it must exercise,

however, in its own interest and in that of the owners of logs in its keeping: *Hall v. Tittabawassee Boom Co.*, 51 M. 377.

184. The right of navigation is not so far paramount as to make booming facilities a nuisance to be abated by force, wherever they encroach on navigable waters, and in any case the question of nuisance must depend on the particular facts. The necessity and convenience of the floatage of lumber in the Manistee river, in the region of which the manufacture of lumber is the prime industry, must be considered in any rules laid down for the public use of the stream: *The City of Erie v. Canfield*, 27 M. 479.

185. Some appropriation of the bed of the stream being essential to the reasonable operation of the booming companies, the state in authorizing by general law the formation of such companies must be deemed to have waived its right to complain of an appropriation that is not unreasonable: *Attorney-General v. Ewart Booming Co.*, 34 M. 463.

186. The question of lawfulness in the action of a booming company in enclosing part of the stream for its own purposes is one depending on the particular facts, whether the general public desiring to avail themselves of the navigable rights are more inconvenienced than accommodated thereby; and inconvenience to another booming company occupying the same stream is not the test. Booming companies, as regards their reciprocal rights in the stream, are in a certain sense common carriers on the same route: *Ibid.*

187. A boom company is not authorized to obstruct a navigable stream needlessly or willfully, to the hindrance of persons driving their own logs, and for such an obstruction it is liable in an action: *Watts v. Tittabawassee Boom Co.*, 52 M. 203. See 47 M. 540.

188. Usage cannot give log-drivers the right to block a navigable stream by putting a boom across it so that vessels cannot pass through: *Gifford v. McArthur*, 55 M. 535.

189. An action is maintainable against one who needlessly obstructs a navigable stream to the injury of one entitled to navigate his tug thereon. Keeping logs in the stream for an unnecessary length of time constitutes such an obstruction: *Ibid.*

190. Defendants sued for obstructing a stream that is also used by other log-drivers below are not liable for the detention caused by the latter unless they protected them: *Ibid.*

191. One who has helped to put logs into a stream is not thereby estopped from suing for damages from the obstruction caused by

unnecessarily detaining them in the stream: *Ibid.*

192. One engaged in running logs sued a company whose business was to stop the logs by a boom until assorted for obstructing navigation. *Held*, that he could not maintain his action, as he was liable to be made a co-defendant for causing the obstruction: *McGinnis v. Carrier*, 39 M. 111.

(b) *Contracts for driving, etc.; compensation.*

As to liens for driving, etc., see LIENS, III.

193. A contract to clear a non-navigable stream and to run logs through it cannot be assumed to be void on the ground of public policy as contemplating trespasses on third persons' lands: *Fuller v. Rice*, 52 M. 435.

194. An express contract to pay a certain sum per M. for running certain logs and to furnish water for floating a part of them into the main stream is not divisible, and cannot be apportioned part to the running and part to supplying the water; and in an action on the contract the measure of recovery would be the full contract price as agreed, less any damages from breach of any part of the contract: *Keystone Lumber, etc. Manuf. Co. v. Dole*, 43 M. 370.

195. Failure to furnish the water is not excused by an accident whereby the dam was broken if the contract does not provide for accidents, or if it is a continuing contract and the dam can be repaired in time for substantial compliance: *Ibid.*

196. One who contracts to drive logs to a certain point at a fixed rate is bound to discharge any lien for tolls imposed by river-improvement companies: *Johnson v. Cranage*, 45 M. 14.

197. A common carrier's liability does not attach to a log-driving company for failure to deliver part of a quantity of logs received by it to be driven to a certain point: *Mann v. White River Log, etc. Co.*, 46 M. 33.

198. The action of the superintendent of a boom company in taking an interest in a contract made with the company is no more than voidable, and may be ratified by the company if the latter is the only party affected by it: *Richardson v. Welch*, 47 M. 309.

199. In deciding what sums booming companies may properly charge for booming under H. S. ch. 114, it is proper to admit evidence of the fair market value of their booming-grounds as helping to afford a basis for a proper estimate, and the fact that they are generally of little value for any other purpose requires con-

siderable latitude to be exercised in admitting evidence; the value is not conclusively fixed by their actual cost to the company: *Pere Marquette Boom Co. v. Adams*, 44 M. 408.

200. Whether a boom company must not tender delivery of logs before being entitled to demand boomage charges thereon, *quere*: *Johnson v. Cranage*, 45 M. 14.

201. H. S. § 2037 gives to one who breaks a log-jam a right of action in *assumpsit* against the log-owners for the expense incurred: *Chapman v. Keystone, etc. Co.*, 20 M. 358.

202. But such claim is not the subject of set-off: *Woods v. Ayres*, 19 M. 345.

203. The statutory *assumpsit* for breaking a log-jam lies, if at all, against the owner of the logs and not against those whom he has hired to run them: *Butterfield v. Gilchrist*, 53 M. 22.

204. Under H. S. § 2035 (prior to its amendment by act 66 of 1887), giving a right of action for services in breaking jams of logs and driving the logs, when necessary for the person so doing to get his own logs down stream, no right of action arose when the stream was not naturally in a navigable condition, and artificial means, such as flooding, had to be used to create a floatage: *Kroll v. Nester*, 52 M. 70; *Shaw v. Bradley*, 59 M. 199.

205. The statutory compensation for breaking a jam and driving logs cannot be recovered unless the owner of the logs has neglected to take measures to keep them out of the way; nor does it cover labor expended in putting logs into the stream, or items not included in the declaration: *Butterfield v. Gilchrist*, 53 M. 22.

206. One who is sued for compensation for breaking a jam of his logs is entitled to show the circumstances of the situation complained of, and in so doing can show that plaintiff had no boom in which to receive the logs after breaking the jam. He can also show that he looked after the business and did not move the logs, because up to the time of the interference therewith he thought it useless to touch them, and afterwards they were in plaintiff's possession: *Ibid*.

207. In *assumpsit* for breaking a log-jam there can be no recovery if it appears that defendant had a sufficient force under his control to move out the logs in a reasonable time, but did not do it by reason of the interference of plaintiff's employees: *Butterfield v. Gilchrist*, 53 M. 155.

208. Plaintiff in *assumpsit* for breaking a log-jam cannot recover if the evidence shows that others first in possession had acquired the whole capacity of the stream so as to render it

impracticable for defendant to move his logs: *Ibid*.

209. In *assumpsit* for breaking a log-jam one cannot recover for running logs in the main stream, or for work in rolling logs from a distance back from the stream, and can recover only for rolling in and removing such logs originally banked or placed there afterwards by defendant's contractors as constructed the stream: *Ibid*.

210. One who has ordered floods for an immediate purpose, and to continue until directed to be stopped, is not liable for floods sent without a new order after a stoppage of several weeks and after the original necessity has passed: *Hall v. Woodin*, 35 M. 68.

211. In an action by a boom company to recover for running and sorting logs which have been allowed to mingle with those in its charge, it is for the jury to decide whether any of the various items of the account properly enter into it, and whether the charges of the company are reasonable; whether it was proper for the company to interfere to take care of defendant's logs, or to detain them temporarily to prevent loss to other owners; and whether an artificial channel provided by the company was useful for clearing the river and securing the safe delivery of logs: *Sturgeon River Boom Co. v. Nester*, 55 M. 113.

212. The cost of running the logs of cut-siders which have become mingled with a drive cannot be charged against the owners of the logs constituting the original drive; the drivers must look to the owners of the intermingled logs to satisfy their claim therefor: *Edson v. Gates*, 44 M. 253.

213. Recovery may be had for extra services in running a drive of logs where the original contract only bound plaintiff to run them within a reasonable time and with reference to existing conditions, and the extra services were such as became necessary and were agreed upon in consequence of the failure of the stream in which they were run: *Davis v. Ladue*, 58 M. 226.

214. When parties in banking logs on the same grounds mix them indiscriminately, each, in the absence of a special agreement, or of some general usage, or other controlling circumstances, ought at the proper time to put on a force of men proportioned to his share of the logs to break the rollway and put the logs afloat, and if either fails in that duty he is liable to the other on an implied *assumpsit* for the reasonable value of the extra work done by the latter in consequence: *Peters v. Gallagher*, 37 M. 407.

215. In defence to such an action, how-

ever, he can show that from the manner in which the work was done it was of no benefit to him, or was a positive injury. And when the other has put his own logs afloat he is not bound to continue putting in the remainder, and if he does so without the owner's knowledge or authority he cannot recover for his services, and will not be liable for any damages resulting from his not putting them all in: *Ibid*.

216. A declaration under act 145 of 1881, which avers the performance of services and labor in breaking rollways, and running and driving defendants' logs, specifies an amount due therefor, and alleges that in consideration, etc., defendants undertook and promised to pay, etc., held sufficient to permit a recovery: *Shaw v. Bradley*, 59 M. 199.

217. In such a case defendant cannot introduce under the general issue, without notice, testimony that a third party had a large amount of logs afloat in the river above those plaintiff had contracted to drive for defendants, and that by reason of plaintiff's failure to put on a sufficient force to keep the river unobstructed this party was obliged to drive defendants' logs in order to drive his own, and claimed pay from defendants for such driving, under H. S. § 2085: *Ibid*.

218. A personal judgment was not authorized by act 185 of 1878, providing for a lien for labor or services upon logs and timber: *Clark v. Adams*, 88 M. 159.

219. But under H. S. §§ 8412-8427 (act 145 of 1881), a judgment *in personam* is authorized where it is found that no lien in fact existed: *Shaw v. Bradley*, 59 M. 199.

(c) *Concurrence of floatage and riparian rights; injuries to latter.*

220. The public right of floatage and the private rights of riparian proprietors must be exercised with due consideration for each other: *Thunder Bay River Boom. Co. v. Speechly*, 31 M. 336.

221. The rights of the public to run logs in a navigable stream are not subordinate to the rights of riparian owners, but are concurrent, and each must be exercised without unnecessarily interfering with the other and without negligence: *White River Log & B. Co. v. Nelson*, 45 M. 578.

222. On a stream which is valuable for floatage, but not for navigation in the more enlarged sense, it cannot be said that the right of floatage is paramount to the use of the water for machinery. The enjoyment of each right must have due regard to the existence and

protection of the other: *Middleton v. Flat River Booming Co.*, 27 M. 533.

223. The right to use the water of a stream for milling purposes and the right to use a stream for the floatage of logs modify each other; and though the exercise of each right may render the other less valuable there is no ground for complaint if it is considerate and reasonable: *Buchanan v. Grand River Log Co.*, 48 M. 364.

224. A river, so far as it is navigable for vessels or capable of floating logs, is only a public highway by water, and the right of navigation or floatage is only a right of passage, including only such rights as are incident to the use of the stream for that purpose and necessary to render such use reasonably available: *Grand Rapids Booming Co. v. Jarvis*, 30 M. 308.

225. A booming or log-running company has no right to flood the land of a riparian proprietor without his consent: *Middleton v. Flat River Booming Co.*, 27 M. 533; *Grand Rapids Booming Co. v. Jarvis*, 30 M. 308; *Stone v. Roscommon Lumber Co.*, 59 M. 24.

226. Persons exercising the public right of navigating a stream by running logs down it, or by collecting, dividing and storing them, must do it with due regard to the concurrent rights of riparian owners to the use of their lands, and are liable in damages to the latter if they raise the water for their own convenience so as to overflow such lands: *Grand Rapids Booming Co. v. Jarvis*, 30 M. 308.

227. The right to flow the lands of riparian proprietors without the latter's consent cannot be inferred from H. S. § 8917, authorizing the formation of corporations for running, booming and rafting logs; nor does this statute exempt such corporations from liability for damage caused by such overflowing as shall necessarily result from the successful exercise of the franchises granted thereby: *Ibid*.

228. A booming corporation organized under H. S. 8917 is as much responsible for damages resulting from a rise in the water caused solely where logs owned by others, or even masses of floodwood, are detained by obstructions which the company has interposed to the natural flow of the current, as they would be if the logs, etc., were their own, in so far as the rise exceeds that which would have occurred if the logs or driftwood had been allowed to pass unobstructed down the stream: *Ibid*.

229. A booming company built a dam to collect the water of a stream periodically navigable, and, by sending it down in floods in the dry season, enable the company to float the

logs, which could not otherwise be floated at that season. A proprietor below was therefore prevented from operating his mill for a considerable portion of the year. *Held*, that he was entitled to maintain an action therefor: *Thunder Bay Co. v. Speechly*, 81 M. 836.

230. Any injury which riparian proprietors receive in consequence of a proper use of the stream for floatage they must submit to as incident to their situation upon navigable waters: *Ibid*.

231. A booming company is not liable for damages caused to riparian owners by a proper and reasonable use of the right of floating logs; but it is liable if by wilful or negligent management it creates or enlarges jams in the stream and thereby overflows its bank to their injury: *White River Log, etc. Co. v. Nelson*, 45 M. 578.

232. A booming company has a right to navigate a river by running logs down the same as a natural highway for that purpose, and if in so doing the water in the stream is not raised higher than it would have been by reason of the logs moving down upon its natural current and surface, any injury to riparian owners is an incident to the use of the stream in its natural condition for the purposes of such floatage: *Anderson v. Thunder Bay River Boom Co.*, 61 M. 489.

233. A boom company has no right, by using a dam or by neglecting to pick a channel, to increase the damage to adjacent land above what would be incident to the ordinary and natural course of navigation: *Ibid*.

234. The public easement in small streams for floatage purposes does not justify crowding them beyond their fair capacity; it is not competent to subject such streams to burdens from distant sources at the expense of other than logging interests: *Koopman v. Blodgett*, 70 M. 610.

235. The fact that a stream during unusual and brief freshets or at periodical times overflows its banks and floods the lands of a riparian proprietor does not justify a log-runner in so increasing, by artificial means, the volume of the stream as to cause such overflow: *Witheral v. Muskegon Booming Co.*, 68 M. 48 (Jan. 5, '88).

236. A log-runner has a right to use a stream in its natural capacity to float lumber or timber, and is not responsible for any damage arising therefrom incidentally and without his fault; but he has no right to deal with his logs in such a way, by the formation of jams or otherwise, as to cause the water to overflow the adjoining lands more than it would were the logs left to themselves and

allowed to float down naturally and without interference: *Ibid*.

237. If a log-running company on a navigable stream uses a sufficient number of men to prevent the unnecessary formation of jams, and to break the jams already formed within a reasonable time after it took charge of them or had the right to take charge of them, and does not run logs unnecessarily against such jams, it cannot be held liable for flooding adjoining land: *Ibid*.

238. Those who put, or cause to be put, logs into a navigable stream are liable to riparian proprietors for injury to their lands and crops caused by log-jams raising the water to such an extent as to overflow said lands: *Bauman v. Pere Marquette Boom Co.*, 66 M. 544.

239. A boom company engaged in running and driving logs placed by others in the stream is not liable for damages to plaintiff's land and crops from floods caused by jams of logs, unless, by the exercise of due care, the formation of such jams could have been prevented or the jams broken: *Ibid*.

240. But, it being the duty of the company to exercise due diligence in running logs and in breaking jams formed by natural causes, it is liable for such damages as may arise from unnecessary or unreasonable delay in removing such jams: *Ibid*.

241. A boom company engaged in running logs is liable for damages if it, knowing of the existence of a jam at a sand-bar, and its inability to move it, cuts a channel in the ice above, or otherwise assists in bringing down more logs and adding to the jam, thus raising the water so as to flood plaintiff's land: *Ibid*.

242. In an action against a booming company for injury to plaintiff's land resulting from jams of logs and consequent overflows, a charge is erroneous which assumes that the company is an insurer against such injuries, and which makes no account of evidence tending to show that some of the overflows were caused by extraordinary rainfalls: *White River Log, etc. Co. v. Nelson*, 45 M. 578.

243. Where a boom company which has built a series of dams in a river lets to contractors the work of driving and delivering to itself at the mouth of the river a large quantity of its logs, it is liable for the damages caused to a third person by floods which the conditions of the contract rendered necessary in the contractors' operations: *McDonald v. Rifle Boom Co.*, 71 M. — (June 22, '88).

244. In an action for flooding plaintiff's land by the use of a dam in driving logs it appeared that during the years covered by the declaration third parties had made like use of

other dams owned by them on the same stream and its tributaries, and the evidence failed to distinguish the floods, though defendant's testimony tended to show the number and seasons of the floods raised by him. *Held*, that defendant was not liable for damages caused by others' floods, but that the testimony as to the number and seasons of his floods afforded some data from which the jury could estimate the damage caused by them: *Bauman v. Pere Marquette Boom Co.*, 66 M. 544.

245. In an action against a boom company for a negligent injury to plaintiff's land it is for the defendant to show the actual condition of the logs and of the water, and to state what was done to remove the logs and prevent the overflow; and then it is for the jury to determine whether or not there were unnecessary jams causing the flowage and damage: *Anderson v. Thunder Bay River Boom Co.*, 61 M. 489.

246. The right to raft logs down a stream does not involve the right of booming them upon private property for safe-keeping and storage: *Lorman v. Benson*, 8 M. 18.

247. Act 142 of 1885, amending H. S. § 2058, in regard to damages caused riparian proprietors by running logs on their lands, provides for certain arbitration proceedings, but the provision therein for a lien on the logs for such damages is also found in § 2058. *Held* that, in a proceeding merely involving the claim of a lien for damages, the question of the constitutionality of the arbitration provision of the act of 1885 is immaterial: *Gratwick, etc. Lumber Co. v. Lewis*, 66 M. 588.

IX. SURFACE WATER.

248. Adjoining owners of land must respect the valuable rights that accrue to each other from the relative situation of their lands in respect to the flow of surface water: *Boyd v. Conklin*, 54 M. 588.

249. In a particular case it was *held* that there was no warrant for complainant's claim of a natural passage-way or easement for the flowage of surface water from his lands into and through an alley as through a drain: *Morgan v. Meuth*, 60 M. 288.

250. An easement whereby water collecting upon land must be allowed to find an outlet, even though it overflows adjacent land, may be acquired by prescription; and evidence is admissible as to the length of time it has so overflowed without objection from the adjacent proprietor: *Conklin v. Boyd*, 46 M. 56.

251. One has a right to discharge the surface water of his land through a ravine where

it has run naturally and has been permitted to run for more than twenty years: *Gregory v. Bush*, 64 M. 37.

252. User, whereon a prescriptive right to a way for water may be based, cannot begin until the person claiming it enjoys the way adversely, or while the title to both parcels of land is in the same owner: *Morgan v. Meuth*, 60 M. 288.

253. A land-owner has no right to obstruct by artificial barriers the flow from his neighbor's land to his own of surface water for which there is no other escape, in order to reclaim the bed of a pond that has always existed on his land and get rid of the inflow: *Boyd v. Conklin*, 54 M. 588.

254. Nor has one a right, by digging ditches or laying tile-drains, to empty the waters collected in sag-holes on his premises into a ravine upon the land of an adjacent proprietor: *Gregory v. Bush*, 64 M. 37.

255. One from whose house rain drips, without fault or neglect on his part, is not liable to one whose estate is injured thereby: *Underwood v. Waldron*, 38 M. 282; *Barry v. Peterson*, 48 M. 263.

X. SUBTERRANEAN WATERS.

256. Owners of the soil have no rights in sub-surface waters not running in well-defined channels, as against their neighbors, who may withdraw them by wells or other excavations: *Uppjohn v. Richland Board of Health*, 46 M. 542.

As to complaint for polluting such waters, see CRIMES, § 650.

XI. WATER COMPANIES; WATER SUPPLY.

257. Where a corporation has been granted the privilege of supplying a village with water, the subsequent incorporation of a city as the legal successor of such village does not destroy or abridge the privileges conferred: *Grand Rapids v. Grand Rapids Hydraulic Co.*, 66 M. 606.

258. A corporation chartered for the purpose of supplying a city with water has the right to lay its pipes in the streets and alleys of such city subject to a reasonable regulative system to be established by the city: *Ibid*.

259. A right of flowage secured by a company organized for hydraulic purposes resembles the rights secured by other corporations, such as railways and canals, of subjecting lands to permanent conditions in the use of permanent structures: *Fitch v. Constantine Hydraulic Co.*, 44 M. 74.

260. Damages for a right of flowage secured by an hydraulic company are a proper subject of statutory arbitration, as H. S. § 8475 excludes only freehold estates; the president and secretary of the company may agree for it upon an arbitration, and the award need not require a conveyance where the submission does not; nor is it avoided by the fact that two arbitrators only, instead of three, signed, unless it is made to appear, on motion to vacate, that they signed in disregard of the conditions regulating submission by a majority: *Ibid.*

A contract for the construction of water-works, and the hiring thereof by a city, construed, see **CONTRACTS**, § 375.

Contract to supply city with water held void as conflicting with charter, see **CITIES, ETC.**, § 149.

261. In proceedings by a village to condemn land for the purpose of securing water supply, the statute must be strictly followed: *Houghton v. Huron Copper Mining Co.*, 57 M. 547. See **CITIES, ETC.**, § 812.

262. Water rates paid to the Detroit board of water commissioners by consumers are not taxes, but are nothing more than the price paid for water as a commodity; no one can be compelled to take water unless he chooses, and the lien, though enforceable in the same way as a lien for taxes, is really a lien for indebtedness. The board may fix the price of water at discretion: *Jones v. Detroit Water Commissioners*, 84 M. 278.

263. That assessments against vacant lots in front of which water-pipes are laid are not apportionable by frontage, see *Ibid.*

As to powers, etc., of water boards, see **CITIES AND VILLAGES**, §§ 150-152; **MANDAMUS**, § 177.

WEIGHTS AND MEASURES.

1. There can be no comparison of weights and measures so as to charge a person with incorrect weighing, except by reference to the legal standards provided by H. S. ch. 84: *McGeorge v. Walker*, 65 M. 5.

2. The extent of the duty of one who, not acting officially as weigh-master, but in a private capacity, for a fee, does weighing for others, is to use reasonable diligence to know that his scales are correct, and reasonable care to avoid mistakes in using them: *Ibid.*

3. An agreement to furnish timber suitable for a particular market contemplates its measurement by the standard customarily used for that market: *Merick v. McNally*, 26 M. 374.

4. A contract for the shipment of timber in

providing that it should be paid for "on the returns of each load shipped" contemplates its measurement at the port of destination: *Gillett v. Bowman*, 43 M. 477.

Further as to custom and usage of measurement, see **CONTRACTS**, §§ 353-355, 363, 445, 446.

Further as to measurement, see that heading in the Index.

WILLS.

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I. GENERAL PRINCIPLES.

1. A will is the legal declaration of a party's intentions which he directs to be performed

after his decease: *Jameson's Appeal*, 1 M. 99.

2. R. S. 1838, p. 270, § 4 (H. S. § 5788), was merely declaratory of the right that every person had at common law to dispose of his personal property by will: *High's Appeal*, 2 D. 515.

3. The power to devise land does not exist at common law, but is governed by statute: *Gibson v. Van Syckle*, 47 M. 439.

4. The power to make wills, the formalities with which they shall be executed, and their efficiency, depend upon the statute: *Beaubien v. Cicotte*, 8 M. 9.

5. Every one has a right to make his will as he chooses: *Pierce v. Pierce*, 88 M. 412.

6. It is intended by the statute of wills that every person shall be at liberty, in making his will, to select the objects of his bounty among his relations at discretion, or to pass them all by if so disposed: *Fraser v. Jennison*, 42 M. 206.

7. Courts cannot interfere with a testator's voluntary and intelligent bequests: *Latham v. Udell*, 38 M. 238.

8. Courts cannot inquire into the propriety of any disposition which a testator sees fit to make of his property by a legally-executed will so long as it is not unlawful: *Toms v. Williams*, 41 M. 552.

9. The right of a testator to dispose of his property by will extends to all his property, and is available against all persons except in so far as the law has prescribed claims superior to his power: *Miller v. Stepper*, 32 M. 194.

10. The existence of an ante-nuptial contract securing certain property to the wife does not prevent the testator from making such a will as he pleases: *Rice v. Rice*, 53 M. 482.

11. A will cannot cut off testator's creditors nor the expenses of administration, and it cannot exclude widow's dower or her right to allowance under H. S. § 5847: *Miller v. Stepper*, 32 M. 194.

12. But prior to Sept. 10, 1881 (H. S. §§ 5824, 5825), a will could cut off widow's right to distributive share of personal property: *Ibid.*

13. Where will makes no provision for testator's widow her dower right is the same as though he had died intestate: *Burrall v. Bender*, 61 M. 608.

And see, generally, DOWER.

14. Testamentary appointment of guardian cannot deprive mother of custody of her child: *Goss v. Stone*, 63 M. 319.

15. A will was held not good as against the testator's subsequent conveyance to his daugh-

ter upon conditions that were afterward performed: *Goff v. Thompson*, H. 60.

That courts cannot compel conveyance by will, see SPECIFIC PERFORMANCE, § 23.

II. TESTAMENTARY CAPACITY.

Evidence to prove or disprove on probate, see *infra*, VI, (e).

16. The testator must be of full age: *Beaubien v. Cicotte*, 8 M. 9; *Simmons v. Simmons*, 8 M. 318.

17. Testator's soundness of mind at the time he makes his will is essential to the will's validity: *Beaubien v. Cicotte*, 8 M. 9.

18. A will is not valid unless the testator not only intends of his own free will to make such disposition, but is capable of knowing what he is doing, of understanding to whom he gives his property, and in what proportions, and whom he is depriving of it as heirs, or as devisees under the will he revokes: *Beaubien v. Cicotte*, 13 M. 459; *Kempsey v. McGinniss*, 21 M. 123.

19. All persons are in law either of sound or unsound mind. If the decedent was not of sound mind, the law treats him as of unsound mind, and he is to be compared with himself and not with others in determining whether he was of sound mind or not: *Aikin v. Weckerley*, 19 M. 482.

20. To make a testator competent he must have sufficient active memory to recollect without prompting the elements of the business to be transacted, and to hold them in his mind a sufficient length of time to perceive their obvious relations to each other, and to be able to form a rational judgment in regard to them: *Ibid.*; *Kempsey v. McGinniss*, 21 M. 123.

21. But testator need not have the same perfect and complete understanding and appreciation of any of these matters in all their bearings that a person in sound and vigorous health of mind and body would have; nor is he required to know the precise legal effect of every provision in his will: *Kempsey v. McGinniss*, 21 M. 123.

22. It is not sufficient in law that the testator had memory when he made the will to answer familiar and usual questions: *Aikin v. Weckerley*, 19 M. 482.

23. One who has capacity to make a contract is competent to make a will: *Rice v. Rice*, 50 M. 448.

24. A less degree of mind is requisite to execute a will than a contract: *Kempsey v. McGinniss*, 21 M. 123.

25. Average mental capacity is not required

for the making of a will; power to buy and sell, to deal in property on the basis of contract, to give deeds and leases and make gifts by delivery, implies sufficient capacity to devise property: *Hoban v. Piquette*, 52 M. 346.

26. A will is not to be set aside merely because its maker was weak, or sometimes foolish, or lacked the average mental capacity of his neighbors, or did not dispose of his property as others who knew nothing of his reasons might think he ought to have done: *Rice v. Rice*, 50 M. 448.

27. The facts that one is an invalid, nervous, reserved, and disinclined or even hardly able to read and write, do not of themselves prove anything against one's testamentary capacity: *Hoban v. Piquette*, 52 M. 346.

28. Derangement of the mental faculties does not incapacitate one from making his will unless it renders him incapable of acting in the ordinary affairs of life or manifests itself in the testamentary provisions: *Fraser v. Jennison*, 42 M. 206.

29. A will is not necessarily to be set aside on proof that the testator suffered from a mental disorder when it was executed; it must also be shown that it affected the provisions of the will: *Ibid.*

30. Delusions as to "greenbacks," or to the effect that one is holding or running for office, or that his wife courted him or had maltreated him after marriage, do not necessarily render a man incompetent to make a will if they do not influence its provisions: *Rice v. Rice*, 50 M. 448.

31. One who is under the delusion that he is a great man and likely to be called to the cabinet is not thereby deprived of testamentary capacity if his will is itself rational and its provisions are not affected by his delusion: *Rice v. Rice*, 50 M. 448.

32. Intoxication of the testator does not of itself avoid his will if it does not prevent him from knowing what he is about: *Pierce v. Pierce*, 38 M. 412.

33. It is proper to consider the character of a will — whether simple in its provisions and application, or otherwise — in determining the question of the capacity to make it; the question always relates to the capacity to make and understand the will in controversy: *Kempsey v. McGinniss*, 21 M. 128.

And see *infra*, VI, (e).

III. UNDUE INFLUENCE.

As to evidence, etc., see *infra*, VI, (f).

34. There can be no fatally undue influence unless there is a person incapable of protect-

ing himself as well as a wrong-doer to be resisted: *Latham v. Udel*, 38 M. 238.

35. Undue influence, to defeat a will, must be such as to destroy freedom of action at the time of making it; but it may have been exerted before and be operative in subsequent effects: *Potter's Appeal*, 53 M. 106.

36. Influence cannot destroy a will unless it amounted to a degree of constraint such as the testator was too weak to resist, and such as deprived him of his free agency, and prevented him from doing as he pleased with his property: *Maynard v. Vinton*, 59 M. 139.

37. Advice, persuasion or argument cannot vitiate a will made freely from conviction, though such will might not have been made but for such advice or persuasion: *Ibid.*

38. A wife may justly influence the making of her husband's will for her own benefit or that of others so long as she does not act fraudulently or extort benefits from her husband when he is not in condition to exercise his faculties as a free agent: *Latham v. Udel*, 38 M. 238.

39. A testator is not unduly influenced by his wife unless she defrauds him or exercises such mastery over his will as deprives him of free agency; she has a right to exert any wisely influence over him: *Pierce v. Pierce*, 38 M. 412.

40. The facts which show undue influence upon a testator must, in the case of married persons, be inconsistent with any other hypothesis; and such as will show that the influence amounted to coercion or fraud. But where there is no relationship, or the relation is only fiduciary, the inferences from the evidence may be different from what they would be in the case of a will made by husband or wife in the other's favor: *Potter's Appeal*, 53 M. 106.

41. Influence obtained by modest persuasion and arguments addressed to the understanding, or by mere appeal to the affections, cannot properly be termed undue influence in a legal sense; but influence obtained by flattery, importunity, superiority of will, mind or character, or by what art soever that human thought, ingenuity or cunning may employ, which would give dominion over the will of the testator to such an extent as to destroy free agency, or constrain him to do, against his will, what he is unable to refuse, is such an influence as the law condemns as undue when exercised by any one immediately over the testamentary act, whether by direction or indirection, or obtained at any one time or another: *Schofield v. Walker*, 58 M. 96.

Further on this subject, see *infra*, VI, (f).

IV. FORMAL REQUISITES.

42. It is not necessary that any particular form of words be used in making a will. An instrument in the form of a letter probated in this case: *High's Appeal*, 2 D. 515.

43. A will of personal property regularly made according to the requirements of the law of testator's domicile passes such property in whatever country it is situated: *Ibid.*

44. The formalities of execution required by statute, R. S. 1888, p. 270, § 5, as amended by S. L. 1889, p. 220, § 14 (see H. S. § 5789), as to attestation by witnesses, etc., apply only to wills executed in this state. As to wills executed abroad by persons domiciled here, the common law prevails: *Ibid.*

45. By the common law it was not essential to the validity of a will that it should be attested by witnesses. Accordingly it was held that a will of personal property executed abroad by a person who died there, but whose domicile was at the time in Michigan, was valid though not attested by three witnesses: *Ibid.*

46. The statutes do not authorize a will of land to be executed without two witnesses except in the single case of a will probated elsewhere and established here on such probate: *Gibson v. Van Syckle*, 47 M. 489.

47. A citizen of Michigan, who died in Iowa while on his way to a place in which he intended to settle, left a letter purporting to be written by an amanuensis but signed in his name, in which occurred the sentence: "I want the proceeds of my estate to go to Robert and Elizabeth Gibson." The signature of a third person was attached to the letter, thus: "Attest, J. E. Shellady." Held, that this instrument could not be originally probated in Michigan as a devise of land: *Ibid.*

48. A declaration by a husband on his death-bed to his wife that, if she pays off the mortgage on his farm and supports the family the land will be hers, cannot, even after full performance by her, be supported either as a valid nuncupative will, or as a valid contract: *Campbell v. Campbell*, 21 M. 488.

49. A legatee is a competent witness to a will where the statute (R. S. 1888, p. 271, § 7; H. S. § 5791) renders a legacy to a witness void: *High's Appeal*, 2 D. 515.

50. A will containing bequests to certain religious societies was executed with only two attesting witnesses, previous to the passage of the act concerning churches and religious societies, § 25 of which (C. L. 1857, § 2038; repealed in 1867) required proof in open court by three subscribing witnesses of wills con-

taining such bequests; testator died after the act took effect. Held, that the will was good and that these bequests were valid: *American Baptist, etc. Union v. Peck*, 10 M. 341.

51. Whether it is necessary to the validity of a will executed in Michigan that the testator should declare it to be his last will, *quere*: *McGinnis v. Kempsey*, 27 M. 868.

52. The condition and position of the testator when his will is attested in reference to the act of signing by the witnesses, and their locality when signing, must be such that he has knowledge of what is going forward, and is mentally observant of the particular act in progress, and, unless he is blind, the signing by the witnesses should occur where the testator, if so disposed, may see them sign: *Aikin v. Weckerly*, 19 M. 482.

53. A will is witnessed in the testator's "presence" if he, being sensible of what he is doing, is in such a position that he can, if he chooses, see the witnesses sign their names thereto: *Maynard v. Vinton*, 59 M. 189.

As to gifts *causa mortis*, see GIFTS, §§ 2-5, 9, 11, 12, 23-25.

V. REVOCATION AND REVIVAL.

54. Marriage alone, without birth of issue, does not revoke a man's will; whether, under our statutes concerning children born subsequently, the birth of issue has its common-law effect, *quere*: *Noyes v. Southworth*, 55 M. 178.

55. A woman's will is not revoked by her subsequent marriage so long, at least, as no children are born: *Ibid.*

56. A man cannot by contract render his will irrevocable during his life, for it is of the essence of a will to be revocable until death: *Mandlebaum v. McDonell*, 29 M. 78, 91.

57. A will made in pursuance of an oral agreement may be revoked by the testator; if the agreement is to devise land it is void under the statute of frauds: *De Moss v. Robinson*, 46 M. 62.

58. A will made to carry out an agreement to leave property to a party in consideration of his taking care of testator was destroyed, and land conveyed to other parties with notice. After testator's death chancery set aside conveyances on ground of grantor's mental incompetency, and left legal existence of will to be determined in probate court: *Leonardson v. Hulin*, 64 M. 1.

59. After the death of a testatrix a will twenty-five years old was discovered in a barrel among waste papers, and either worn or torn into several pieces, which were scattered loose among the papers in the barrel. Whether

the injury to the instrument was done by the testatrix or by some other persons, and, if by her, whether accidentally or intentionally, and for the purpose of revoking the will, are questions of fact for the jury; and to aid them in determining these questions, and not as separate and independent evidence of a revocation, the declarations of the testatrix, made after the date of the will, that she had destroyed it, are competent evidence: *Lawyer v. Smith*, 8 M. 411.

60. In a suit to test the validity of a missing will, the questions litigated being whether the decedent had not so destroyed the will as to revoke it, and whether it was not originally procured by undue influence, declarations of the decedent manifesting dissatisfaction with the dispositions of the will, though not made at the time of the alleged acts of spoliation, are competent evidence, bearing both upon the question of the destruction of the will by the decedent and upon the intent of his acts: *Harring v. Allen*, 25 M. 505.

61. Where the execution of a will has been conclusively established and it has been regularly probated, and a later will is afterwards produced which does not revoke the former one in terms, the question of revocation cannot be determined in a mere proceeding for the probate of the later will if there is any room for a dispute as to construction. And if probate is allowed the former probate should be left to stand for what it is worth, and its effect may be decided elsewhere: *Besançon v. Brownson*, 39 M. 388.

62. A will is not revived by the destruction of a subsequent will when the latter or any intermediate will had contained a clause revoking all former wills: *Scott v. Fink*, 45 M. 241.

63. When a will has once been expressly revoked by a later one, nothing can ever be claimed under it, even though the later will has been lost or destroyed: *Stevens v. Hope*, 52 M. 66.

VI. PROBATE.

As to costs, see COSTS, §§ 295, 296.

(a) *Jurisdiction; laches; nature of proceedings.*

64. With us all wills are subject to probate; but an original probate can in no case be granted here except by the court that has jurisdiction of the estate: *Lloyd v. Wayne Circuit Judge*, 56 M. 236.

65. Act 25 of 1883, attempting to provide for the *ante-mortem* probate of wills, held inoperative and invalid, as not providing for any

proceedings of a conclusive or judicial nature, and as inconsistent in its enforcement with the maintenance of a widow's right to administer or to nominate guardians: *Ibid.*

66. To give a probate court jurisdiction of proceedings to prove here a will already proved elsewhere, a copy of the foreign will and the probate thereof duly authenticated must be presented to the court: *Pope v. Cutler*, 34 M. 150.

67. The record of a will with the proof of it and the letters issued thereon constitute, it seems, the probate of it in New Jersey, without a distinct judicial act or decree; and such record and proof entitle the will to be presented for allowance here: *Wilt v. Cutler*, 38 M. 189.

68. Technical or unsubstantial objections should not be permitted to defeat foreign probate: *Ibid.*

69. Although a probate judge is a legatee named in the will his preliminary orders (of hearing and notice) before probate thereof are valid: *McFarlane v. Clark*, 39 M. 44.

70. One who holds or has knowledge of a will under which he claims as legatee should secure its probate within a reasonable time after he knows of the testator's death, and failing to do so he may bar himself from making claim thereunder; and a lapse of fourteen years after a knowledge of the death, under such circumstances, is an unreasonable time: *Foot v. Foot*, 61 M. 181.

71. Proceedings to prove wills are not suits or actions in the ordinary sense of contentious litigations between parties; they are summary and statutory, and partake of the character of proceedings *in rem*: *Allison v. Smith*, 16 M. 405; *Frazer v. Wayne Circuit Judge*, 39 M. 198; *Stevens v. Hope*, 52 M. 65.

72. The object of probate is to dispose of all questions of execution, and ascertain whether the instrument propounded as the last will of the decedent is such last will, and whether the case is wholly or in part one of intestacy or not: *Allison v. Smith*, 16 M. 405.

73. The probate of every will, whether in the original or appellate tribunal, must be single and complete in one hearing: *Frazer v. Wayne Circuit Judge*, 39 M. 198.

74. So that several appeals from the allowance of a will are merely appearances in a single and indivisible proceeding, and consolidation of such appeals is unnecessary, though proper from abundant caution: *Ibid.*

75. And on the same principle a proceeding for the probate of a will is not severable for the purpose of removal to federal court: *Frazer v. Jennison*, 106 U. S. 181.

(b) *Parties.*

76. All persons who are concerned or interested in the probate of a will are parties to the proceedings: *Allison v. Smith*, 16 M. 405; *Stevens v. Hope*, 52 M. 65.

77. A guardian has such an interest as entitles him to petition for the probate of a will in his ward's favor: *Morford v. Dieffenbacher*, 54 M. 594.

78. A widow's right to administer upon her husband's estate or to name a guardian for children under fourteen is substantial, and gives her such an interest as entitles her to notice of any judicial proceedings that may be taken to establish a will which might divest her of it and which she claims to be illegal: *Lloyd v. Wayne Circuit Judge*, 56 M. 236.

79. Unless the foreign probate of a will is presented by an executor or other person interested in the will, it cannot be allowed here. This is a necessary and jurisdictional condition which should appear in the record: *Besançon v. Brownson*, 39 M. 388.

80. No one can contest a will which only disposes of property, except the heir at law or next of kin of the testator: *Taff v. Hosmer*, 14 M. 249.

81. Where a will appoints a guardian for a minor any one may contest it who would be entitled to be heard upon an application for guardianship, *e. g.*, the minor's next of kin; but they cannot oppose it on any ground except that it is not a valid will, as a father's testamentary power cannot be reviewed: *Ibid.*

82. The proponents of a will, when they appeal from a decree refusing probate, become actors responsible for costs, and shape the issue to suit themselves. If the circuit court has power to allow some of them to renounce and be discharged, such power is discretionary and refusal is not reviewable on error: *Beaubien v. Cicotte*, 12 M. 459.

83. Where a will appoints a guardian for a minor, the latter's next of kin may appeal from its allowance if he has opposed the will in the probate court: *Taff v. Hosmer*, 14 M. 249.

84. Executors under a will that gives them exclusive powers and trusts and provides for unborn heirs may appeal from a refusal of probate though all the beneficiaries named in it, and all who would have been interested in it had decedent died intestate, should settle the estate among themselves and oppose the appeal: *Cheever v. Washtenaw Circuit Judge*, 45 M. 6.

85. Where one interested in the allowance of a will admitted to probate did not take or join in an appeal, it was *held* that he had no right to contest the will on the trial in the circuit, his true position being that of an appellee; nor could he maintain a writ of error to reverse the action of the circuit court affirming the decree of the probate court: *Jackson v. Hosmer*, 14 M. 88.

86. Dismissal of such writ for that reason does not bar another party, aggrieved by the judgment, from suing out a new writ: *Taff v. Hosmer*, 14 M. 249.

87. And if, instead of moving to dismiss an appeal in the circuit court, the proponents of the will join issue on the merits with an appellant, and the judgment affirming the will is also in form a personal judgment against the appellant for costs, this liability is a personal grievance upon which appellant may bring error; but if he has no further interest in the judgment below he cannot dispute the will itself: *Ibid.*

(c) *Petition; issues.*

88. A petition for the allowance of a will proved in another state which avers that the will was duly probated in such state, that the petitioner is one of the executors named therein, that a duly authenticated copy of said will and the probate thereof in such state was then filed in the probate court to which the petition is directed, which petition is signed by such petitioner by A. & B., as her proctors, is properly signed, and sufficiently shows the petitioner to be a person interested in the estate, and that a copy of the will was produced to the judge of probate in which her interest appeared: *Feustmann v. Gott's Estate*, 65 M. 592.

89. A probate judge should entertain a petition for the allowance of a foreign will if there is any law to authorize him to do so; it is unimportant that the petitioner makes his application under the wrong statute; so *held* where the application was made under H. S. §§ 5805, 5806, instead of first proceeding under H. S. §§ 5826-5830: *Schober v. Wayne Probate Judge*, 49 M. 323.

90. A petition for the probate of a will need not, it *seems*, allege testamentary capacity: *Hathaway's Appeal*, 46 M. 326.

91. The issue upon the probate of a will is in a measure marked out by the statute, and cannot be contracted to the detriment of those "concerned or interested" by the act of others who happen to be proponents: *Allison v. Smith*, 16 M. 405.

92. In proceedings for the probate of a will the only main issue is whether or not the paper propounded is a will, and if there are also minor issues they belong to the same inquiry and cannot be presented separately: *Hathaway's Appeal*, 48 M. 326.

93. A written issue need not be made or joined in the probate court, but the party aggrieved may appeal to the circuit court where an issue may be framed if deemed essential: *Turnbull v. Richardson*, 69 M. 400 (April 20, '88).

94. Upon an appeal from the decree of a probate court allowing or disallowing a will, the substance of the controversy must be the same as on the issue of *devisavit vel non*: *Baptist Missionary Union v. Peck*, 9 M. 445.

95. While it is proper to make in the circuit court a new issue in the common-law form, the issue cannot differ materially from that necessarily made on the application for probate; and it makes no difference that a formal issue is not made up in the circuit court, since the substance of the issue is the same whether made up in form or not: *Ibid.*; *Ellair v. Wayne Circuit Judge*, 46 M. 496.

96. The averments on the part of the propounders of a will for the purpose of forming an issue upon its validity should include everything necessary to constitute a valid will under the statute, so that a verdict finding the truth of all these averments, without more, would bring the instrument within all the express requirements of the statute: *Beaubien v. Cicotte*, 8 M. 9.

97. The testator's soundness of mind at the time of the execution of the will must be averred: *Ibid.*

98. No matter how many different persons appeal from the probate of a will they can only raise one issue, and there can be but one trial of that issue, which is to determine the question of will or no will: *Frazer v. Wayne Circuit Judge*, 39 M. 196.

99. Whether, after appealing from probate on the sole ground of testamentary incapacity, contestant can raise the question of undue influence, *quere*: *Hoban v. Piquette*, 52 M. 347.

100. Where an issue is formed in the circuit court on an appeal from the allowance of a will, it is not necessary for contestant to plead specially the decedent's soundness of mind; the general issue is sufficient: *Taff v. Hosmer*, 14 M. 309.

101. The issue on appeal may be tried without a jury if neither party demands one: *Baptist Missionary Union v. Peck*, 9 M. 445.

(d) *Evidence generally; subscribing witnesses; evidence of later will.*

102. The proponents open and close the case, both with the evidence and on the argument: *Taff v. Hosmer*, 14 M. 309.

103. Where a subscribing witness to a will was called to prove it upwards of thirty years after its date, and testified that he signed it as a witness, but that he had no distinct recollection of seeing the testatrix sign it, *held*, that questions to him whether, looking at the attestation clause, he had any doubt she signed it in his presence, and whether he ever witnessed an instrument in that form without knowing what it was, and whether he had any doubt that the persons whose names were to it were present at the time of its execution, were not incompetent, and it was for the jury to give such weight to his evidence in answer thereto as they might think it entitled to under all the circumstances of the case: *Lawyer v. Smith*, 8 M. 411.

104. H. S. § 5802 does not require all the subscribing witnesses to be sworn on a contest of a will, though it possibly implies that they should be sworn in the probate court. But the failure to produce them in the circuit court on an appeal, if within the jurisdiction and easily reached, would be a suspicious circumstance: *Abbott v. Abbott*, 41 M. 540.

105. Subscribing witnesses to a will are presumed to have had, when signing, full knowledge of what they were doing; and if dead, their attestation when proved is *prima facie* evidence that everything was done as it ought to be. But in contested cases the regularity of the proceedings is open for general testimony: *Ibid.*

106. The probate of a will does not depend on the recollection or veracity of a subscribing witness: *Ibid.*

107. On appeal from the probate of a will the omission to ask one of the subscribing witnesses some particular question, as with regard to the testator's capacity, does not hinder the contestant from showing by cross-examination the knowledge or ignorance of the witness: *Ibid.*

108. The error of admitting a will in evidence without having called a particular subscribing witness out of several to prove its due execution is cured by calling him afterwards and allowing the contestants to cross-examine him: *Fraser v. Jennison*, 42 M. 206.

109. If the circuit court on appeal can discharge a proponent so as to make him a witness such power is discretionary: *Beaubien v. Cicotte*, 12 M. 459.

Legatee a competent witness in support of will, see EVIDENCE, § 1685.

110. A surety in an appeal bond is not a party to the appeal, nor one "in whose immediate and individual behalf the appeal is prosecuted;" he may, therefore, testify for the appellant: *White v. Bailey*, 10 M. 155.

111. Such facts in regard to a testator's fortune and the circumstances and relations of his family, within his knowledge, as would naturally influence him in his testamentary dispositions, are admissible on proceedings to prove his will: *Stevens v. Hope*, 52 M. 65.

112. Evidence of declarations made by a decedent and tending to show a change of mind in regard to the disposal of his property and an actual alteration thereof are admissible in proceedings to contest his will to corroborate the testimony of a witness as to the existence and contents of a later will: *Hope's Appeal*, 48 M. 518.

113. Where the existence of a later will is in question, in proceedings to prove an earlier one, the facts as to a motive and opportunity for its destruction cannot be ignored; and it is proper to show that if the will had ever existed it would have fallen under the control of persons who were beneficiaries in the other will: *Stevens v. Hope*, 52 M. 65.

114. The non-production of an alleged revoking will is immaterial in contesting a proceeding to prove a former one, if there is sufficient evidence that it ever existed: *Ibid.*

115. Where a will is contested on the ground that there was a later will, the existence of which proponents deny, the proponents cannot, it seems, object to parol evidence of its contents on the ground that the alleged will itself is the best evidence: *Hope's Appeal*, 48 M. 518.

(e) Evidence on issue of testamentary capacity.

As to testamentary capacity generally, see *supra*, II.

Testator's physician may testify, see PHYSICIANS, § 19.

1. Burden of proof; presumptions; prima facie proof.

116. The burden of proof is on the proponent of a will to show the soundness of mind of the testator at the time of its execution. But upon questions of evidence, growing out of any presumption of sanity affecting the burden of proof, the court express no opinion: *Beaubien v. Cicotte*, 8 M. 9.

117. The proponent of the will has the affirmative, and must first make out his *prima facie* case, both as to the fact of the execution of the will and the competency of the testator. The evidence at the opening is usually of a formal character, confined to inquiries of a general nature respecting the signing and attestation, and whether, at the time, the testator understood the business in which he was engaged. The proponent is not required to put in his whole case on the question of mental competency before resting, and the case will be fully open to affirmative proofs on his part after the contestants have put in their evidence: *Taff v. Hosmer*, 14 M. 809; *Aikin v. Weckerly*, 19 M. 482; *Kempsey v. McGinniss*, 21 M. 123.

118. Proponent before resting is bound to make a *prima facie* case on the averment of soundness of mind; and this involves the production of some other evidence of testamentary capacity than is furnished by the legal presumption: *Aikin v. Weckerly*, 19 M. 482.

119. In the probate of wills, when the capacity of the testator is contested, after a *prima facie* case has been established by the proponents, the case, for all purposes connected with the order of proof upon that question, stands the same as if the burden of proof throughout rested upon the contestants to show mental incapacity. The contestants before they rest are bound to introduce all their testimony in support of their case, and cannot, after proponents have gone fully into their evidence and rested, go again into evidence in support of their own case, but are confined to strictly rebutting evidence upon such new facts as had been brought out by the proponents not pertaining to the contestants' case, or, though bearing upon it, yet could not reasonably have been anticipated by them while giving their evidence in chief: *Kempsey v. McGinniss*, 21 M. 123.

120. There is no special rule as to the amount of proof necessary to establish an affirmative in testamentary cases; a preponderance is required. The burden of establishing testamentary capacity remains with the proponent to the end of the trial, and he must produce evidence sufficient to outweigh that which is opposed. And the whole evidence, whether presumptive or offered by either party, is for the consideration of the jury: *Aikin v. Weckerly*, 19 M. 482.

121. It was not error to decline to charge that "If the jury should find that, upon the other testimony relating to the testator's mental soundness, the evidence was balanced, they should allow the legal presumption of

sanity to decide the question in the testator's favor;" the burden of proof is on the proponents of a will to establish capacity by other evidence than the presumption of sanity, and that presumption cannot have the force of an independent fact to serve as a substantial make-weight against counter-proof: *McGinnis v. Kempsey*, 27 M. 363.

122. The presumption from keeping a will uncanceled is that its execution was not procured against the testator's will or against his intelligent consent, whether fraud, undue influence or the testator's intoxication is alleged against it: *Pierce v. Pierce*, 38 M. 412.

123. A probate order adjudging a man "incompetent to have the care of his property," and appointing a guardian for him, is not *prima facie* evidence that he lacks testamentary capacity; nor does it become so by the recital in the order that he is insane, if the petition for guardianship does not put his sanity in issue. But such an order may be put in evidence as bearing on his condition: *Rice v. Rice*, 50 M. 448.

124. A recital that a man is insane is superfluous, even if it be proper, in an order adjudging him incompetent to manage his estate; and such a recital is not such evidence of testamentary incapacity as to be admissible for that purpose in resisting probate of his will: *Rice v. Rice*, 58 M. 432.

2. Relevancy and materiality; remoteness.

125. A testator's disposition of his property has no bearing upon a contest of his will except as it tends to show whether or not he was sound of mind: *Brown v. Bell*, 58 M. 58.

126. The fact that a testator had expressed regret that he had made a particular bequest has no bearing on his mental capacity: *Fraser v. Jennison*, 43 M. 206.

127. Where an alleged will is contested upon grounds relating to the mental condition of the testator at the time it was executed, declarations by the testator, whether made before or after the will, in opposition to its dispositions, are competent evidence bearing on mental capacity: *Harring v. Allen*, 25 M. 505.

128. Statements of a testator that he wanted a first will to stand are inadmissible on the issue of his mental competency to make a second one: *Wurzell v. Beckman*, 52 M. 478.

129. Evidence may be given to show that the reputation of an executor was bad, for the purpose of reflecting upon the testator's

capacity, it having already appeared that the testator had knowledge of the executor's character: *McGinnis v. Kempsey*, 27 M. 363.

130. Where wills are contested on the ground of testamentary incapacity, courts must exclude all evidence that is merely calculated to rouse prejudice without throwing light on capacity: *Pierce v. Pierce*, 38 M. 412.

131. The reception of testimony as to testamentary incapacity should be carefully guarded where it is apparent that the witness bases it upon his knowledge that the testator is subject to delusions which, in fact, do not affect such capacity: *Rice v. Rice*, 58 M. 432.

132. In a proceeding to set aside a will for insanity and undue influence there is no apparent relevancy in testimony that the testator, who was an old, married man, had once, while away from home with his son, wanted to stop at another man's house to see the latter's daughter: *Ibid*.

133. Where testator's recollection as to a certain transaction was the question at issue, and had not depended on the witness' recollection, the question as to what recollection witness himself had was properly excluded as immaterial: *McGinnis v. Kempsey*, 27 M. 363.

134. Held error to allow a physician to testify that it is the duty of a physician when called to treat a patient to examine into his mental condition. The material fact is, what examination was made: *Maynard v. Vinton*, 59 M. 189.

135. Where the contestants of a will attack the competency of the testator, but make no case entitling them to go to the jury on that point, they cannot be injured by any rulings as to the admission of rebutting evidence: *Hoban v. Piquette*, 52 M. 346.

136. Facts tending to show testamentary incapacity are admissible even if they antedate the making of the will; the difference of time only affects their weight, which is for the jury to determine: *Conely v. McDonald*, 40 M. 151.

137. Letters showing friendly relations with a brother are not admissible many years afterward as tending to show that the writer, in not leaving any bequest to the brother's children, with whom friendly intercourse had not been kept up after the brother's death, had so lost his natural affection as to indicate insanity; and affectionate letters to and from other relations, equally remote, to whom, however, he had left bequests, though they may not be strictly inadmissible, may be properly excluded: *Fraser v. Jennison*, 43 M. 206.

138. Where intoxication is alleged as a

reason for testamentary incapacity, testimony must be confined to the time involved in the transaction: *Pierce v. Pierce*, 38 M. 412.

139. Proof of such imbecility of mind as disqualifies one from making a will should be shown, if it does not amount to idiocy, by the testimony of witnesses who have had personal knowledge of the facts within twenty years before the will was executed: *Hoban v. Fiquette*, 52 M. 846.

3. Opinions of witnesses; experts; questions.

140. To what extent and in what manner the mind of the testator was affected by a disease, or what was his mental condition, is a question of fact, upon which it is competent for professional witnesses to express their opinions: *Kempsey v. McGinniss*, 21 M. 123.

141. But witnesses cannot be allowed to fix the legal standard of testamentary capacity: *Ibid.*; *White v. Bailey*, 10 M. 155.

142. Before any witness, expert or otherwise, can give an opinion upon mental capacity, the circumstances and facts whereon the opinion is based must be shown: *White v. Bailey*, 10 M. 155.

143. Opinions by non-professional witnesses are admissible when they can speak from personal observation, but such witnesses are expected to describe as well as they can what has led to their conclusions as well as their means of observation: *Beaubien v. Cicotte*, 12 M. 459; *Rice v. Rice*, 50 M. 448.

144. In the case of professional witnesses as well as in that of unprofessional ones — who are allowed to give their opinions only from personal observation — the facts upon which the opinion is founded must be stated, and the jury must be left to determine whether the facts as well as the opinions are true or false: *Kempsey v. McGinniss*, 21 M. 123.

145. Expert's opinion incompetent if it assumes as true testimony of certain other witnesses, the whole of whose testimony he did not hear, it not appearing what facts stated by them he did and what he did not hear: *Ibid.*

146. The effect of intoxication upon the capacity of the intoxicated person is not a scientific question to be determined by experts: *Pierce v. Pierce*, 38 M. 412.

147. The opinion of physicians upon questions of mental competency, aside from the question of insanity, is entitled to no greater consideration than that of laymen having equal facilities for observation; and an instruction to the contrary is not cured by the court's saying that the effect of their testimony

is for the jury: *Maynard v. Vinton*, 59 M. 139.

148. The question in a will case whether or not the testator was an eccentric man, *held* not objectionable as calling for a conclusion instead of a fact: *Fraser v. Jennison*, 42 M. 206.

149. On a question of capacity to execute a will it was *held* proper to ask a witness, who had seen and conversed with the decedent near the time of executing the instrument, whether, from the conversation then had, or from what the witness then saw, the decedent was capable of comprehending or understanding a document of any considerable length if it had been read to him: *Beaubien v. Cicotte*, 12 M. 459.

150. Also what capacity the decedent had at the time to understand business matters, and whether he was then capable of holding a conversation like one testified to by another witness: *Ibid.*

151. It was *held* proper to ask a professional witness, upon the assumption of certain facts, "Was the testator, in your opinion, at the time, etc., capable of planning and executing such a paper as is here offered as his will?" Also, "Was he in a mental and physical condition to transact any business requiring an exercise of the judgment, the reasoning faculties, and a consecutive continuation of thought?" *Kempsey v. McGinniss*, 21 M. 123.

152. The opinion of a physician as to testator's capacity to plan and execute the paper propounded as a will was *held* admissible: *McGinniss v. Kempsey*, 27 M. 363.

153. A will was contested on the ground of want of mental competency and for undue influence. The provisions of the will were simple and the bequests few. An old acquaintance of the decedent was asked, as a witness for contestants, the following question: "Having reference to the extent of her [decedent's] property, I ask you whether, at the time of making this will, in your opinion decedent had sufficient mental capacity to take into consideration the state of her property, the amount of it, and the relation of her children to her, so as to be competent to make this will?" Also, "From what you know of decedent, from your acquaintance with her from the time you first knew her up to 1875, what could you say about her mental ability to comprehend and understand a disposition of her property, and her ability to make her will to the extent of this paper here" [the will]? *Held*, that both questions were competent: *Porter v. Throop*, 47 M. 313.

154. The question whether a testator was

competent to make a will dividing his property among his family is not objectionable for failing to specify the particular will in suit if that will is as simple as any will could be: *Rice v. Rice*, 53 M. 483.

155. A complicated hypothetical question put to a non-professional witness criticised as misleading: *Rice v. Rice*, 50 M. 448.

156. A long question to an expert excluded in a particular case: *Fraser v. Jennison*, 42 M. 266.

(f) *Evidence upon issue of undue influence; instructions; verdict.*

157. He who objects to a will for undue influence has the burden of proving affirmatively that it has been exerted; and the proof must often consist of circumstances trivial in themselves and convincing only when taken together: *Potter's Appeal*, 53 M. 106.

158. Where a will is contested on the ground of fraud or undue influence, a very broad inquiry is permitted into the whole chain of circumstances attending its preparation; and the transaction must be deemed to embrace all the immediate preliminaries: *Beaubien v. Cicotte*, 12 M. 459.

159. Undue influence being charged against the testator's wife, statements of the decedent that he regretted the marriage; that he was not master at home; that he was afraid of his wife, and was compelled to submit to her demands, or otherwise there would be trouble in the house, were held admissible in evidence: *Ibid.*

160. The will disinheriting the decedent's relatives in favor of the wife and her relatives, it was held competent to prove the wife's abuse of the husband's relatives, and her quarrel with him about a former will by which he had made provision for them. A wide range of inquiry into the family relations, and the terms upon which they lived, is allowable in these cases: *Ibid.*

161. Evidence that the decedent made no complaint of any importunities on the part of his relatives is also admissible, where it appears that the wife made charges to him of their rapacity: *Ibid.*

162. Evidence of former wills and of other pecuniary arrangements for the wife is also admissible, as having a bearing upon the question whether the decedent has understandingly and of his own free will changed his settled views: *Ibid.*

163. Where the instructions for executing a will contemplated that the attending physician should be sent for to attest it, the *res*

gestæ necessarily embrace this as one of the steps actually taken; and what message was sent or received and acted upon is therefore admissible, as a circumstance which may have weight or not, as made significant or not by other proofs: *Ibid.*

164. Where a will disinheriting the testator's children is contested for fraud, it is competent for the propounder to put in evidence all those facts which might have contributed to alienate the testator's feeling from his children, as such a state of mind would furnish a motive for giving his property to another, and tend to repel the suspicion of undue influence: *White v. Bailey*, 10 M. 155.

165. A testator's declarations, whether made before or after the will, in opposition to its contents, are not admissible on the distinct fact of undue influence: *Harring v. Allen*, 25 M. 505.

166. Ancient scandals concerning a husband's relations with his wife before their marriage are irrelevant to the question of her undue influence as a wife in the making of his will: *Pierce v. Pierce*, 38 M. 412.

167. Where a will is contested on the ground that it was procured by the undue influence of the testator's wife, his general condition and surroundings and his relations with her may be properly shown, but only for such a period as can reasonably be regarded as bearing on the act of disposing of his property; and recent facts are more trustworthy than those that are long past: *Ibid.*

168. A doctor who had parted from his wife but had not yet been divorced was treating a sickly widow who had means. Being afterward divorced he married the widow, and in less than seven weeks she died. Before the divorce the two had talked about making their wills each in the other's favor, and the woman had actually made a will with which the man was dissatisfied. On the day of her death she made another, in which she gave her husband an absolute estate of inheritance, though she had evidently been made to suppose that it conveyed a life estate only. They had not been acquainted three years altogether. *Held*, that in contesting the probate of the will for undue influence a broad latitude of inquiry should have been allowed, and the relations of the pair before marriage as well as afterwards, including letters passing between them, might properly be shown so far as they tended to throw any light on the question of undue influence: *Potter's Appeal*, 53 M. 106.

169. The ground upon which divorce proceedings were taken against a man is inad-

missible upon the issue whether he exerted undue influence in obtaining a will in his favor from a subsequent wife with whom he had business relations before the divorce was granted: *Ibid*.

170. In proceedings to set aside a will for undue influence exerted by testator's wife, evidence whose manifest purpose and only tendency was to prejudice the jury against the wife was *held* improper; such as that the testator had said she had courted him before and maltreated him after marriage; and also that there was an ante-nuptial contract by which she was to have certain property. And in the absence of proof of undue influence it was also improper to show that some deeds prepared by testator had never been executed, because, as he had said, his wife would not sign them, and that once when out late he had expressed the fear that his wife would scold him and that he did not mean to stay at home that night if she did: *Rice v. Rice*, 58 M. 482.

171. Certain specified facts held admissible upon the issue of undue influence claimed to have been used by a son upon his mother, the decedent: *Porter v. Throop*, 47 M. 813.

172. A trustee named in a will was also a subscribing witness, and testified to its due execution and the testator's sanity. He was asked on cross-examination as to whether he had proved a claim against the estate, and an offer was made to show that the witness had himself drawn the will; that testator was very old, and that before his will was made he had been prompt to pay his debts. *Held* proper to exclude the question and the testimony: *Fraser v. Jennison*, 42 M. 206.

173. A husband contesting the probate of his wife's will on the ground of undue influence cannot testify as to confidential conversations had with her during marriage: *Maynard v. Vinton*, 59 M. 189.

174. Where the contestant of a will does not allege undue influence in his pleadings, and submits his case upon the theories of mental incompetency and the defective execution of the will, there is no error in refusing requests to charge that suggest for the first time the theory of undue influence: *Brown v. Bell*, 58 M. 58.

175. The refusal of certain instructions concerning undue influence in a case where the probate of a will was resisted upon the ground of such influence over the mind of testatrix by her pastor and his wife, in whose family she was a boarder, *held* not error: *Schofield v. Walker*, 58 M. 96.

176. The issue was submitted to a jury

whether an alleged will was the last will and testament of the decedent, and whether at the time of executing it he was of sound and disposing mind, and not under the undue influence of the devisee therein named. The jury returned a verdict that the will was the last will and testament of the decedent, and that at the time of executing it he was of sound disposing mind and memory, and capable of disposing of his property by will. *Held*, that it covered the whole issue, and necessarily negatived all undue influence: *White v. Bailey*, 10 M. 155.

(g) *Adjudication; conclusiveness and effect; relation back; effect of foreign probate.*

177. A record made in 1847 by the probate court of a decree made by the same court in 1837, admitting a will to probate, was proper: *Ives v. Kimball*, 1 M. 308.

178. Denial of probate should not be affirmed without hearing on merits — affirmance asserts jurisdiction; on refusal of *ante-mortem* probate proper order on appeal is one quashing whole proceeding: *Lloyd v. Wayne Circuit Judge*, 56 M. 286.

179. Dismissal by circuit court of appeal from allowance of probate cannot be set aside by circuit court after two years if at all: *Ellair v. Wayne Circuit Judge*, 46 M. 496.

That error lies to review decision on appeal, see ERROR, § 16.

180. Probate of a will is conclusive against all the world while unrevoked: *Allison v. Smith*, 16 M. 405. See JUDGMENTS, § 197.

181. There is no statutory provision concerning the revocation of probate or its effect on existing rights. The probate court, on probating a later will, has no authority to revoke an earlier probate: *Besançon v. Brownson*, 39 M. 388.

182. The statute respecting probate makes no distinction between kinds of wills; and a will giving all the property to a college allied but in fact only to a religious body (see C. L. 1857, § 2082) must be fully proved, once for all, as under the general law, and probate thereof covers the question of the legal authority to make such a disposition: *Allison v. Smith*, 16 M. 405.

183. Probate of a will, if allowed, cannot be collaterally assailed for the want of a showing that the proponent had not proved the allegations on which his right to petition was based: *Morford v. Dieffenbacher*, 54 M. 594.

184. Upon probate a will becomes fully

operative and retroactively from testator's death: *Allison v. Smith*, 16 M. 405.

185. The probate of a will affirms the title of a beneficiary under it from the time of the testator's death; and it relates back so as to make valid whatever had been previously done, which under the will the beneficiary could lawfully have done after probate: *Sutphen v. Ellis*, 35 M. 446.

186. Probate of a will for all purposes relating to the existence and transfer of title relates back to the death of the testator: *Richards v. Pierce*, 44 M. 444.

187. Subsequent probate and administration granted here sustain claim filed by the foreign executor in behalf of the estate: *Feustmann v. Gott's Estate*, 65 M. 592.

188. Foreign probate cannot be enforced here without re-allowance: *Dickinson v. Seaver*, 44 M. 624.

189. The probate of a will in another state is sufficient to entitle a residuary legatee to intervene and contest the allowance in this state of an administrator's account upon proceedings here: *Mower's Appeal*, 48 M. 441.

VII. CONSTRUCTION.

Devisees who have conveyed realty but retain interest in personalty may appeal from construction: See *APPEAL*, § 358.

Costs of proceedings to obtain construction, see *COSTS*, §§ 290-294.

(a) General rules.

As to extrinsic evidence to control or vary construction, see *EVIDENCE*, §§ 1369-1377.

190. The interpretation and legal consequences of a will are the only matters that can come in question after it has been duly admitted to probate: *Toms v. Williams*, 41 M. 552.

191. It is the duty of courts, in the construction of wills, to give full and complete effect to the testator's intention: *Jameson's Appeal*, 1 M. 99.

192. The primary object in interpreting a will is to reach, if possible, the intent the testator had in his mind and give effect to it: *Rock River Paper Co. v. Fisk*, 47 M. 212.

193. Wills are to be so construed as to carry out the evident intentions of the testators so long as they are lawful: *Cummings v. Corey*, 58 M. 494.

194. The cardinal principle in the interpretation of wills is to arrive at and carry out the testator's intention if it is lawful: *Eyer v. Beck*, 70 M. 179; *Morrison v. Sessions*, 70 M. 297.

195. The intention of the testator as ascertained from the words of the will must govern the construction; but the expressed intention governs only so far as it is consistent with the laws of the land: *Fraser v. Chene*, 2 M. 81.

196. A will must be so construed that each word means something, if possible: *Rivenett v. Bourquin*, 53 M. 10.

197. The general intent of a will, if it can be gathered from the whole instrument, governs its construction; and neither the usual sense of technical language, nor the order of clauses, may disappoint the apparent and real purpose of the testator: *Jones v. Jones*, 25 M. 401.

198. A testator's intent is to be determined from the whole will, which is to be given effect as far as it may lawfully be done: *Teucksbury v. French*, 44 M. 100.

199. Wills are usually informal, and the question of construction is not so much what words are actually used as what was intended by them; the law favors testamentary arrangements, and when they contravene no rule of law they should be fairly interpreted and enforced according to their real intent: *Tracy v. Murray*, 49 M. 35.

200. The courts will so interpret the condition of a will where the language is obscure or ambiguous as to carry out the testator's intention, when such intention is legal and can be clearly gathered from the whole body of the instrument: *Palms v. Palms*, 68 M. 355 (Feb. 2, '88).

201. Courts are bound to carry out the real design of the testator, as derived from a comparison of all the parts of the will; and the meaning of all words and phrases must, if possible, be harmonized: *Bailey v. Bailey*, 25 M. 185.

202. A will must be construed as a whole, and its provisions harmonized to give effect to the testator's evident intent: *Ireland v. Parmenter*, 48 M. 631.

203. Language creating rights should be construed according to its ordinary and commonly-accepted meaning if used by persons who are unacquainted with any different technical significance which it may have in law: *Rivenett v. Bourquin*, 53 M. 10.

204. Terms used in wills are generally to be construed as having the meaning which has become generally accepted, but they are also to be construed in connection with the rest of the will: *Porter v. Porter*, 50 M. 456.

205. The general words in a will may be restrained in their meaning, or rejected entirely to carry out the intention of the testator. So general words may be construed by

the particular words which follow: *Jameson's Appeal*, 1 M. 99.

206. In construing a will the evidence should place the court in the position of the testator when he made it, and from that stand-point its language should be read and applied unless its uncertainty prevents: *Tuxbury v. French*, 41 M. 7.

207. The established rules governing the construction of wills should not be departed from for new views of policy, or because of the hardship of a particular case: *Fraser v. Chene*, 2 M. 81.

208. Courts cannot adopt astute constructions to defeat provisions claimed to be unjust: *Toms v. Williams*, 41 M. 552.

209. Substance rather than form must be regarded in construing wills; and all intendments must be made to prevent a partial intestacy: *Ibid*.

210. The presumption that a testator means to die intestate as to a part of his estate will not be raised where the will does not naturally lead to that inference: *Bailey v. Bailey*, 25 M. 185.

211. Wills should be construed if possible in favor of vesting interests; and future interests should be treated as vested where there is any present interest in the income of the property: *Toms v. Williams*, 41 M. 552.

212. Such a construction of a will is favored in law as conforms the distribution thereunder, as nearly as the language will permit, to the general rule of inheritance, and regards equities rather than technicalities: *Rivenett v. Bourquin*, 53 M. 10.

213. While a testator may perhaps be supposed to have a reasonably correct idea of the condition of his estate at the time of making his will, it cannot be presumed that he expects his circumstances to remain unchanged and that he disposes of his property on that theory: *Kinney v. Kinney*, 84 M. 250.

214. Judicial tribunals cannot inquire into a testator's hopes and expectations as to what his fortune may turn out to be when his will shall take effect any further than he has seen fit to express them; where he has clearly expressed a wish consistent with the rules of law, they must give it effect; they are not at liberty to surmise that his real wishes were something different: *Ibid*.

215. A will is often made when death is not imminent, and such a will may well provide for the contingency of a change of fortune; a small but certain legacy is therefore proper as an alternative to one which may be large and may be worthless: *Ibid*.

216. A gift by will cannot be defeated by

any ambiguity that would not defeat a deed or bill of sale: *Ibid*.

217. Where a will disposes of real and personal property in the same terms the testator's language cannot receive one construction for one class of property and another for the other, unless the context requires it to be differently construed: *Ireland v. Parmenter*, 48 M. 631.

218. A testator's intent to forgive a debt due him from a legatee should be clear and unambiguous to warrant that construction: *Baldwin v. Sheldon*, 48 M. 580.

219. The language in a will which gives an executor his authority is presumed to have been made with reference to the statutory provisions relating thereto, and must be construed as if it embraced those provisions: *Vernor v. Coville*, 54 M. 281.

220. Intestacy as to property purporting to be disposed of by will is a question of construction for the court, and cannot be settled by the admissions of parties: *Turner's Appeal*, 48 M. 369.

221. The supreme court cannot revise the construction of a will if the finding below does not set forth the facts on which it was based: *Tuxbury v. French*, 41 M. 7.

222. Dispositions of property created by mutual benefit associations partake of the nature of testamentary dispositions, and are to be governed by the same rules of construction: *Union Mutual Assoc. v. Montgomery*, 70 M. 587.

(b) *Description of persons.*

223. Where the context determines the sense in which the word "heirs" is used in a will, effect must be given to the will accordingly: *Hascall v. Cox*, 49 M. 485.

224. Where a testator, who at the time of the execution of his will and at the time of his decease had a sister and several brothers and a nephew and nieces, children of a deceased brother, living, devised his lands to said sister "and her heirs, forever, and in failure of heirs to the children of" said deceased brother, *held*, that to give effect to the plain intent of the testator the word "heirs" should be construed to mean issue of the body of the sister living at the time of her decease; and that upon her death without issue living, the lands went to the said children of the deceased brother, and not to the heirs generally of the sister. The devise to the sister was what at common law would be an estate-tail, with remainder over to the children of said deceased brother, in the event of her dying without

such issue; and this was a valid contingent limitation under H. S. § 5520: *Goodell v. Hibbard*, 33 M. 47.

225. The term "heir," as generally used, refers to one who takes an estate of inheritance himself: *Bailey v. Bailey*, 25 M. 185.

226. The word "heirs," though technical, and when used in legal instruments more or less forcibly presumed to have its technical meaning, may also be understood, when used in common speech or in wills, which are often informal instruments, to mean those who come in any manner to the ownership of any species of property by reason of the owner's death; and it may include a testator's wife, next of kin and legatees as well as those who take by descent: *Hascall v. Cox*, 49 M. 435.

227. Where a childless testator gave control of all his property to his executors, and by the chief provisions of his will specified certain distinct bequests to his wife, leaving the rest of his property, after certain minor bequests, to "descend to his lawful heirs according to law," it was held not to be his intention that the term lawful heirs should include his wife for further share in the estate: *Bailey v. Bailey*, 25 M. 185.

228. A testator declared that all the residue of his estate, after all charges were paid, should be divided among his legal heirs, according to the laws of Michigan. His heirs at law would be identical with the distributees of his estate, and consisted of his wife, a brother, two sisters, and the five children of a deceased sister, four of whom were males. He also provided that these four nephews should receive a certain farm "in full of all claims they might have as heirs." Held that, notwithstanding the use of the word "heirs," the residue should be divided among the heirs at law, except the nephews, according to the provisions of the statute of distributions; and that, although the nephews were provided for, the niece should not receive the full share to which her mother would have been entitled, but only what she would have received if her brothers had been included among the distributees: *Hascall v. Cox*, 49 M. 435.

229. Under H. S. § 6379, A., and B. his wife, adopted a child, whose mother, C., joined in the declaration of adoption. B. dying, the child returned to her mother, and on application by A. and C. the probate judge revoked his order of adoption. Subsequently A. made a will leaving his estate to his "lawful heirs." Held, that the child was not such an heir within the testator's intention, whether the revocation of adoption was valid or not: *Morrison v. Sessions*, 70 M. 297.

230. A testator devised a life estate to his widow, remainder to his children "now living, or who may be at the time of her decease," to be equally divided. All his children survived him, but two died before the widow, and one left a widow and children. Held, that the estate in remainder vested on the testator's decease, and that the heirs at law of the deceased son were entitled to the share of their ancestor: *Rood v. Hovey*, 50 M. 395.

231. A testator gave his widow an estate for life in his entire property, and added a residuary clause providing that on her decease it should be equally divided between his "surviving children." Held, that the will vested an estate in all the children surviving at his death, and that the heirs at law of any child who died before the widow were entitled to the share of their ancestor unless the will indicated otherwise: *Porter v. Porter*, 50 M. 456. As to survivorship, see *infra*, § 266.

232. A will which provides that, "after the death of testator's daughter, he gives her children and grand children," etc., contemplates descendants then unborn who shall be in being at the time of the daughter's death: *Cheever v. Washtenaw Circuit Judge*, 45 M. 6.

233. A testator devised property "to the surviving children of [her] brothers." Held, that she meant those surviving at her death, and not those who were alive when the will was made: *Eberts v. Eberts*, 42 M. 404.

234. The words "if living" and "if not living" in a bequest refer to living at the time of testator's death: *Union Mutual Assoc. v. Montgomery*, 70 M. 587.

235. A woman willed her property to her four children equally, and added that if either died before she did her estate should be "divided among the survivors or their legal representatives, share and share alike." One of the four did die before the testator, leaving two children. Held, that they were entitled to the share of their mother: *Rivenett v. Bourquin*, 53 M. 10.

236. A man deeded certain property to one of his sons in consideration that the son should relinquish all right to any of his estate as heir. Afterwards, in making his will, he set apart a fund of \$7,000 for the support of his wife and infant child, and further provided that when the child should become of age he should have \$2,000 of the fund in lieu of all claims on the estate, except that on his wife's death he should have a distributive share of the remaining \$5,000 "with the rest" of the testator's heirs. Held, that this amounted to a bequest of the \$5,000 to the whole class of heirs, and that the son to whom the deed was made

was entitled to share: *Turner's Appeal*, 48 M. 369.

237. A will provided that the estate should be equally divided among testator's "lawful heirs," giving the name of each child, but not of any grandchild, describing the grandchildren only as "the children of C. B., deceased." *Held*, that the grandchildren together took but as one child: *Eyer v. Beck*, 70 M. 179 (May 11, '88).

(c) *The estate created.*

238. A will contained the following devise: I give and bequeath to my beloved son, G. C., the farm I now reside on, for and during his life-time, with all the appurtenances thereon; and after his decease, then the right, title and appurtenances of the aforesaid farm is to become the property of the said G. C.'s male heirs. *Held*, that G. C., by the will, took an estate-tail, which by the statute of 1827 — see H. S. § 5519 — changed into a fee-simple: *Fraser v. Chene*, 2 M. 81. (The rule in *Shelly's* case is now abolished in this state by H. S. § 5544.)

239. Where a will provided that the testator's sister, who was named as a devisee, should support her mother and pay to certain children a specified sum within a week after the testator's death, she having received a bequest of personal estate also, it was *held* that this could not prevail to enlarge the sister's estate in the realty against the clear purpose of the will: *Goodell v. Hubbard*, 32 M. 47.

240. A devisee's interest is not enlarged from a life estate to a fee merely by the fact that the terms of the will impose the burden of maintaining the testator's wife upon the devisees: *Gaukler v. Moran*, 66 M. 353.

241. A devise of lands to testator's daughter "during her natural life-time, and, after her death, to her heirs and assigns forever," to have and to hold the premises above described to the said F. during her natural life and afterwards to her heirs and assigns forever, gives her only a life estate, with remainder to her heirs: *Ibid*.

242. A devise of property for the devisee's natural life, with authority to dispose of enough for his support, if the use of it should be insufficient, gives only a life estate with conditional power of disposal. And so long as any money bequeathed by the will is available for the devisee's support, the real property cannot be sold for that purpose: *Morford v. Dieffenbacher*, 54 M. 594.

243. A widow who was made life tenant of the real estate and co-executrix with another was charged by the will with removing

the bodies of the testator's former wife and family from where they were buried to his place of interment. There was no provision in the will for defraying the expenses of the removal. *Held*, that it not appearing that there was not sufficient personal property to pay the costs of removal, and the widow not being sole executrix, her life estate was not enlarged into a fee: *Curtis v. Fowler*, 66 M. 696.

244. The testator devised to his wife all his real estate, to remain to her use and benefit while she should remain a widow, it at her decease to be and remain to his daughter's use and benefit. *Held*, that the daughter took the remainder of the real estate on the death of the wife, and that her estate prior thereto was an estate of expectancy as of the date of the testator's death, under H. S. § 5557: *Ibid*.

245. Where a will indicates that the testator's intention was to confer upon his wife an absolute estate in all his real and personal property, the clause, "And after the death of my said wife, it is my will that my estate, real, personal and mixed, that shall remain, should be distributed in manner following," etc., was *held* to be intended simply as the expression of a wish as to the distribution of any possible unspent remainder, and not to affect the unconditional gift and power of disposition already granted to the wife: *Jones v. Jones*, 25 M. 401.

246. Whether a will whereby the testator gives to his wife all his estate "during her natural life, for her use," but after her death gives to others "what may be left" of his estate after her death, conveys to the wife a life estate only in the property, or whether it does not rather confer upon her full power of final disposal and confine the limitation over to such as she may see fit to leave undisposed of at her death, *quere*: *Sutphen v. Ellis*, 35 M. 446.

247. Whether an absolute bequest of a specific mortgage to testator's wife, and a further bequest of the residue of the mortgage to a son after her death, does not transfer to the wife an entire and absolute interest, instead of a life interest merely, or a partial or qualified one, *quere*. But assuming that it conveyed a qualified interest only, leaving a contingent interest, or a possibility of benefit, in the son, the widow would be entitled to the possession of the securities, and to bring suit upon the same to enforce collection thereof. She was immediate legatee of the specific property, with the right to consume the whole if she desired: *Proctor v. Robinson*, 35 M. 285.

248. A devise of an estate in remainder to a woman on condition of her ceasing to live with her husband, the property to go to another if she continues to live with him until her death, gives an estate clear of conditions. It provides for a forfeiture on breach of condition, but does not state a condition precedent: *Conrad v. Long*, 88 M. 78.

249. An estate cannot vest and lapse from time to time according to circumstances: *Ibid.*

250. A devise of the rents, profits and income of lands to the widow during her life, so long as she should remain a widow, is construed to convey an estate for life on condition that she did not marry: *Mandlebaum v. McDonell*, 29 M. 78.

251. An absolute and exclusive devise of the proceeds of lands when sold, with no provision whereby any other person should in any event have any right or interest therein, and subject only to a life estate in the widow of the devisor, is held to be in legal effect a devise of the remainder in fee: *Ibid.*

252. A mother left to her daughter, who was her sole heir at law, certain property which certain other persons were to take in case the daughter died childless in her minority, as she did. Held, that the devise to the daughter was conditional, and therefore did not carry the same interest which she would have taken as heir at law, and that the estate never vested in the daughter: *Plant v. Weeks*, 89 M. 117.

253. A devise of an estate in trust, providing that one-half of the income shall be paid to testator's son and one-half to his daughter for life, is a devise to each in severalty of a life estate in half the property: *Palms v. Palms*, 68 M. 355.

(d) Powers in trust.

254. A will directing executors to sell real estate to the best advantage and invest the proceeds is a general power in trust, and authorizes sale without probate license: *Battelle v. Parks*, 2 M. 581; *King v. Merritt*, 67 M. 194 (Oct. 13, '87).

255. Where a will, after making gifts that embraced the whole estate, appointed two persons "as executors to sell and dispose of all my estate and carry out the provisions of my last will," etc., it was held that the executors had power, without probate license, to sell real estate, if necessary, to pay debts and legacies: *Tracy v. Murray*, 49 M. 35.

256. A particular will was held to invest executors with an active trust, and to authorize them to sell lands, control and invest the

proceeds, and use them for the benefit of the *cestui que trust*: *Haddon v. Hemingway*, 89 M. 615.

257. A will empowering two executors to sell and convey real estate warrants a sale made by one if the other has renounced the trust: *Vernor v. Coville*, 54 M. 281.

(e) Particular devises and bequests.

258. A will, after devising the real estate of the testator, contained the following clause: "It is my will that all my furniture and property be in common to my beloved wife Elizabeth and daughter Jane, so long as they live and keep house together, and that whenever they separate or break up housekeeping that the furniture be divided between them at their own discretion, and the stock of cattle to be given up to my beloved wife Elizabeth, for her sole use and behoof." Held, that a claim which the testator had against the Chippewa Indians, and which was allowed and paid over to the executor under a treaty concluded after the testator's death, did not pass under the will to the widow and daughter: *Jameson's Appeal*, 1 M. 99.

259. A will provided for sales of the real property and for a distribution of the proceeds by the executors, without stating who should make the sales, though it clearly expressed the intent to debar the devisees to whom the proceeds were to be paid from making them. Held to confer the power of sale as a naked power, without estate or interest, upon the executors, but not to invest any estate or title in them; under such a will the title must have vested in the meantime either in the heirs at law of the devisor or in the devisees named in the will: *Mandlebaum v. McDonell*, 29 M. 78.

260. A clause in a will giving testator's wife so much of his property, real and personal, as is allowed by law to widows in cases where no will is made, or in lieu of personal property allowed her by law, \$500 to be taken by her in case she so elect in lieu of said personal property, is held not to be ambiguous, and it is construed so as to give effect to the apparent intent manifest in it. The "personal property allowed by law," to which the sum of \$500 is made an alternative, refers to the specific property to the value of \$450 which by law the widow is allowed to select: *Kinney v. Kinney*, 84 M. 250.

261. A testator began his will with the words: "To my wife the provision made for by the statutes of this state I deem sufficient," and after providing sundry legacies to others

he added a clause giving to his son "all the residue of my estate after paying the above bequests, legacies and my debts and the expenses of settling my estate." *Held*, that he meant to give his wife what she would have received if he had died intestate: *Kelly v. Reynolds*, 39 M. 464.

262. A devise of stores attached to the freehold and forming a part of realty also belonging to the testator covers the ground on which they stand: *Toms v. Williams*, 41 M. 552.

263. A will required the executors to put up a building on certain land, and provided that, "should it become necessary to sell real estate for the purpose of building," they might sell certain other specified premises. The lot and buildings were to go to the testator's grandson, but in case the latter died under eighteen, "all the real estate" was to go to the testator's brother. The grandson died at the age of fifteen, and his administrator claimed a quantity of personalty, not specifically bequeathed by the will, as belonging to the estate of his intestate as his grandfather's sole heir at law. *Held*, that the will evidently intended that this residuum of personalty was to be used in building the stores, and that it therefore went with the lot on which they were to be put up, to the testator's brother: *Allen v. Stead*, 38 M. 756.

264. A man bequeathed to his wife his house and all his personal property "to her sole use forever." His will also provided that she should have the use of all his moneys during her natural life; that after her death a specified legatee should have \$500 out of any money that she might have at her death; and finally that *residues* of the money should be divided among certain other legatees. There was a mortgage among his assets which it was agreed should be considered as money. *Held*, that the widow was entitled to the possession and management of the fund represented by the mortgage. It *seems* also that the word "use" in the will does not mean interest, but enjoyment: *Patterson v. Stewart*, 38 M. 402.

265. A testator provided for the disposition of a certain bequest to his wife "in case of her death before his estate was settled." *Held*, that the settlement meant was the stage of proceedings when the funeral expenses, debts and legacies had been paid and nothing remained but to divide the residue: *Calkins v. Smith's Estate*, 41 M. 409.

266. A devise to the minor children of a specified person or to the survivors of them of the net accumulations of a fixed fund of realty and personalty to be paid to them annually after the youngest reached majority

until a certain date, the entire estate being in trust till then for the purpose of freeing it from an encumbrance, and to be then turned over to the devisees as tenants in common, was *held* to create a present vested estate in the legatees; to contemplate survivorship at the testatrix's death, and not that the last survivor should take the whole estate to the exclusion of the descendants of the other legatees; and in effect to give to the same devisees the entire present and future beneficial estate subject to certain distinct and independent trusts for retaining the income during their minority and for finally freeing the estate, which were also for their benefit: *Toms v. Williams*, 41 M. 552.

267. A man devised to one of his daughters the S. $\frac{1}{4}$ of the S. $\frac{1}{4}$ of the S. $\frac{1}{4}$ of a specified quarter section, and further described it as containing fifteen acres, and as being fifteen rods wide by one hundred and sixty long. There was a similar devise to another daughter, and another was to have a strip twelve and one-half rods wide, and containing twelve and one-half acres. There were three remaining daughters, who were to receive the residue, share and share alike. The actual quantity in each of the first devisees, according to the first clause in the descriptions, would be thirty acres; but if they were construed as giving thirty acres each, there would have been no residue for the last three devisees. *Held*, that they covered only fifteen acres: *Tewksbury v. French*, 44 M. 100.

268. A clause in a will described certain property as "being the same land on which the said Sidney Tewksbury now lives." It *seems* that such a description does not necessarily cover the entire tract within the enclosure: *Ibid*.

269. A man devised certain real estate to two nephews, to be sold when they became of age and the proceeds to be equally divided between them; but he also provided that his wife was to have control of the property until they became of age. *Held*, that she was to have meanwhile the exclusive and beneficial right of enjoyment: *Hogan v. Hogan*, 44 M. 147.

270. A testator devised *all* his property to his wife, who was to pay his debts. The next clause was as follows: "The half of the residue after her decease to be paid to my two sisters in Scotland, share and share alike; if either should die before my wife's death, then the other to have the full half; if both should be dead, then let it be divided between their nearest heirs; the other half to be disposed of as my wife may direct." *Held*, that the widow

took the entire estate, and that the will contemplated that if she sold it and did not use all the proceeds during her life, one-half of the proceeds should be paid to his sisters or their heirs, and the other should be disposed of as the widow should direct: *Weir v. Michigan Stove Co.*, 44 M. 506.

271. A woman devised to her husband the undivided half of certain descriptions of land, referred to as "containing 240 acres," and she made the devise subject to a right reserved by her grantor to occupy one-half of the dwelling-house thereon. She devised the other undivided half to her children. The descriptions were according to the government subdivisions, but embraced only 140 acres, which was only a part of the 240 acres actually granted to her in one compact body, and no other disposition was made of the rest of this grant. The dwelling-house was not upon the 140 acres devised. *Held*, that the testator's evident intent was to devise the entire 240 acres: *Waldron v. Waldron*, 45 M. 350.

272. Where a will merely designated certain persons as executors, employing no words of grant or devise to indicate a purpose that any estate should pass to or be vested in them, and the only powers conferred upon them beyond those of executors were that they should have the "control and direction of" testator's son, and should determine the ultimate disposition of the estate by the judgment they should form and express upon the son's past and probable future conduct, *held*, that no trust was thus created, and that the legal title was left to descend according to the rules of law: *Rock River Paper Mill Co. v. Fisk*, 47 M. 212.

273. A provision in the will for the son's dying without issue meant his dying without issue after it had been determined by the executors, as provided by the will, that the conduct and promise of the son were unsatisfactory, and that determination having never been made, and the son remaining owner at the time of his death, the estate passed under the will of the son to his devisee: *Ibid*.

274. Where a will disposed of realty after the decease of testator's wife, but made no express directions concerning its disposal during her life, *held*, that if to that extent an intestacy it would during that period pass to the person or persons entitled to hold it in case there had been no will; and as the widow — there being no descendants — was entitled to possession during life of intestate lands, the life estate belonged to her. Whether such an intent could not be gathered also from

the will, *quere*: *Langrick v. Gospel*, 48 M. 185.

275. An annuity of \$50 required to be payable monthly out of any money which should come into the hands of the executors by their right as executors construed to mean \$50 a month, and not \$50 a year, and made chargeable on the entire personalty of deceased, so that as to that there was no intestacy: *Ibid*.

276. A will declared that "all the foregoing legacies are intended and declared to be for the individual estate of the said legatees, exclusive of any indebtedness to me at this date or others." *Held*, that this did not release legatees from any indebtedness due to testator: *Baldwin v. Sheldon*, 48 M. 580.

277. A devise of a farm, saying that devisee is to have it on same terms as devisor bought it on, except that he is not to pay any interest on the mortgage thereon after devisor's death, does not require him to pay interest accruing before or after such death: *Enders v. Enders*, 49 M. 132.

277a. A bequest to D. of a seventh part of the residuary estate, such share to be ascertained by deducting, valuing it at \$6,000, certain property specifically bequeathed to D., is not ambiguous, and D.'s share is found by including \$6,000 with the balance of the estate not specifically bequeathed, and dividing the total into sevenths; if one-seventh exceeds \$16,000, D. takes the difference; if not, the remainder — leaving out the \$6,000 — belongs to the residuary legatees: *Mann v. Hyde*, 71 M. — (July 11, '88).

277b. Where one of the seven parts into which the residuary estate is divided is assigned to H., Mrs. H. and their son "in equal terms to each of the three," the share of Mrs. H., she dying before testator, does not lapse, but the entire one-seventh goes to H. and the son: *Ibid*.

277c. A bequest to testator's sister-in-law who died before him lapsed, there being nothing in the will requiring her to be treated as a blood relation; H. S. § 5812 does not apply: *Ibid*.

278. A will giving to the testator's wife all his real estate, lands, tenements, etc., together with all his chattels, personal moneys, credits, etc., that shall remain after discharging his legal debts; to have and hold the same in sole possession and to enjoy the sole use and benefit thereof during the term of the legatee's natural life; provided, that any heir afterwards born shall receive out of such property or out of its proceeds or annual income all needful and proper support, maintenance and education during minority, and shall at age

receive half the property, or the whole if the legatee named be dead, is *held* (1) to dispose of the entire estate, real and personal, without leaving any portion to be dealt with under the statute of descents or of distribution; (2) to bestow it absolutely upon the wife and expected children: *Chambers v. Shaw*, 52 M. 18.

279. A testator left his wife all the personal property "belonging to or used in connection with" his farm and being thereon at the time of his death, to be used by her until his youngest son came of age, it being his intention to keep it in their hands until all should die. *Held*, with some hesitation, that the proceeds of wheat that was in his barn when he died belonged to his residuary legatees: *Kempff's Appeal*, 58 M. 352.

280. A fund provided for the "support" of a person cannot be appropriated to the building or completion of a dwelling place: *Morford v. Dieffenbacker*, 54 M. 594.

281. A wife who had a separate estate when she was married made her husband, who was an insolvent debtor, the executor of her will, in which she provided, after making other bequests, that he should have the use of the remainder during his life-time, and that on his death it was to be divided as directed. It was to be kept invested, and no encroachment was to be made upon the principal except in emergencies. *Held*, that this will created a trust for the husband's benefit, and that the fund was beyond the reach of a creditor's bill against the husband: *Cummings v. Corey*, 58 M. 494.

282. A woman devised to her granddaughter a life interest in her estate, remainder to the issue of such devisee, but should the latter die without issue the estate was to pass in equal shares to the deviser's brothers and sisters, and if any of them should have died his share was to be equally divided between his children. The grand-daughter died without issue, but before she died the only child of a deceased brother of the deviser died, leaving a will in which he disposed of all the estate of which he should die possessed. *Held*, that whether this will did or did not cover his contingent chance or interest under the devise in question, such interest was determined by his death, and his will conveyed no share of the original estate: *Fitzhugh v. Townsend*, 59 M. 427.

283. A bequest to executors of a sufficient sum of money in trust, to be by them invested in the best government bonds to the amount of \$75,000, one-third of which — \$25,000 worth — shall be at once given to my said wife, . . . the remaining \$50,000 worth to

be held in trust," etc., requires a purchase of bonds to the face value of \$75,000: *Wisner v. Kleinhans*, 69 M. 807.

284. A man devised certain lands to his wife, and in a further provision of his will devised the same lands to his children after the decease of his wife. Another clause devised them to his wife "during her natural life." He then disposed of "all the residue of [his] estate, real, personal and mixed, . . . to have and to hold the same to her use and benefit during her natural life, and then to be divided equally between [his children] or their heirs." *Held*, that after the wife's death whatever remained passed immediately to the children and not to the wife's administrator: *Ireland v. Parmenter*, 48 M. 631.

285. A testator, after specifying a number of legacies, bequeathed the whole of his estate to two certain persons as executors, in trust for the payment by them of debts, expenses and legacies. The trust duties related to the distribution of the estate and were not substantially different from those of executors. To one of the executors he had made a specific bequest. He also empowered them to employ a certain person as counsel. He afterward, by codicil, revoked the specific bequest to the executor and appointed in his stead the person named as counsel, adding that it was his intention to so change his will that the superseded executor should not receive any legacy or benefit whatever by virtue thereof. *Held*, that this revoked also his appointment as trustee, and substituted the later appointee to perform the trust duties in his place: *Palmer v. Keam*, 54 M. 617.

286. A man after deeding some land to one of his sons in consideration of the latter's relinquishing all claims of inheritance made a will in which his wife and another son were the only legatees specifically named. He provided that his wife should have the use of \$7,000 until this son became of age, when the son was to have \$2,000 of it. When the mother died the remaining \$5,000 was to revert to the estate and the son was to share in it "with the rest of my heirs." *Held*, that this clause practically revoked the former arrangement by which the other son was excluded from any right of the inheritance, and entitled him not only to a share in the \$5,000 but in any surplus for disposition: *Turner's Appeal*, 52 M. 398.

VIII. VALIDITY OF PROVISIONS.

(a) *In general.*

287. The courts will, if possible, sustain a will where there is no doubt of the testator's

sanity and competency, and that it was executed without duress or undue influence: *Palms v. Palms*, 68 M. 855.

288. The general intent of a testator may be sustained by cutting off a void trust which is separable from valid trusts and dispositions and is not an essential part of the general scheme: *Ibid.*

289. A power may be created by will: *Battelle v. Parks*, 2 M. 581.

290. Whatever a testator might do in life he may leave trustees to do: *Toms v. Williams*, 41 M. 552.

291. Municipal corporations, cities and villages may take money bequests for educational purposes; a bequest to a village of money to be used in erecting a building to be used as a high school and to be suitable for that purpose, held valid: *Hatheway v. Sackett*, 32 M. 97.

292. A bequest to a school-district board named, and its successors, in trust to invest at interest, and expend the interest annually for purchasing and adding to a school library such books as will be suitable for people of all ages and classes in the district, and so used by them under proper rules and regulations as shall best promote the interests of education, general literature and morality, is a valid bequest: *Maynard v. Woodward*, 86 M. 428.

293. A devise of lands cannot be made to an unincorporated society by name: *Ticknor's Estate*, 18 M. 44.

294. But a bequest of money generally, and not upon permanent uses, to an unincorporated association capable of clear identity, is valid: *Ibid.*

295. The object of C. L. 1857, §§ 2032-2034 (repealed in 1867), concerning bequests, etc., to religious societies, etc., was the restriction and regulation of religious bodies here, within the legislative control of this state, and did not embrace foreign associations not undertaking to exercise their peculiar functions within the state as if lawfully incorporated within it: *Ibid.*

296. The receipt of money under a will, and the institution of legal proceedings to recover it, held not to be regarded as the exercise of corporate franchises such as were forbidden by said statute to any but domestic corporations; foreign corporations, therefore, were entitled to recover bequests made in their favor by a testator in this state: *Ibid.*

297. C. L. 1857, § 2032 (repealed in 1867), concerning devises, etc., to institutions "connected with" religious bodies, did not mean necessarily an organic connection by charter, but denoted any relation, organic or conven-

tional, by which one society is linked or united to another: *Allison v. Smith*, 16 M. 405.

(b) Conditions.

298. Conditions are not favored when they defeat estates, and should not be subject to continuance at the option or through the misconduct or neglect of others than the beneficiaries where any other conclusion is reasonable: *Calkins v. Smith's Estate*, 41 M. 409.

299. A stipulation in a will for the separation of husband and wife as a condition to the enjoyment of an estate is void as against public policy: *Conrad v. Long*, 33 M. 78.

300. A husband devised lands to his widow to go to his children in case of her death or marriage. In ejectment by the children, claiming under devise by their father and by deed from their mother, it was held immaterial whether this limitation was valid or not; or, if valid, whether it was in the nature of a mere condition that could be forfeited only by entry of the heirs, or a conditional limitation that determined the estate and passed it over to the heirs *ipso facto* upon the widow's marriage. If valid and simply in the nature of a condition subsequent so that the widow could continue to hold until entry should be made for its forfeiture, her conveyance would have divested her of that right and vested it in plaintiffs as completely as entry. If in the nature of a conditional limitation, no entry was necessary, but her estate terminated and vested in her heirs immediately upon her marriage. The devise to the widow being in either case a life estate only, it was merged in the fee when it became vested in the owners of the fee subject only to their less estate. If the condition or conditional limitation was void, the widow became absolute owner of a life estate, to which only the real estate owned by the heirs was subject, and her conveyance transferred the life estate to the heirs and it merged in the fee: *Ryder v. Flanders*, 80 M. 336.

(c) Restraints upon alienation; perpetuities; accumulations.

301. Provisions in restraint of alienation are not to be favored: *Walton v. Torrey*, H. 259.

302. The provision in a will that the estate shall remain undivided until the youngest of the devisees becomes of the age of twenty-one years is not such a limitation as will inhibit any one of the devisees from conveying his interest in the premises: *Ibid.*

303. Where a will provided that each disposal of real estate made by it should only be for the use and benefit of the persons in whose favor it was made, his or her life lasting; that no parcel of the real estate should be sold or alienated in any manner; but after the decease of those several persons to whom shares or parcels of the estate were assigned, said shares should remain for the use and benefit of the descendants of him or her to whom a share had been assigned, their lives lasting, and so on; and in case of demise without posterity, the said share should accrue to the use and benefit of the owners being of the testator's relations or descendants, their lives lasting, of the next share or shares, and so on, as long as any posterity should exist, and in case of extinction to the next heirs,—it was *held* that the will, inasmuch as it sought to create an indefinite succession of life estates, and to render the property inalienable, was void as being against the policy of the law: *St. Amour v. Rivard*, 2 M. 294.

304. Such devise cannot be sustained as an executory devise. An executory devise directing limitations beyond the period allowed by law is void for the whole, and not merely for the excess beyond the legal period: *Ibid*.

305. The doctrine of approximation, generally called the *cy pres* doctrine, cannot be applied in support of a will of this description, there being no general intention of the testator, not conflicting with the law, which the court could sustain by sacrificing the testator's particular intention: *Ibid*.

306. R. S. 1838, p. 258, § 5, provided that "When lands are given by deed or will to any person for life, and after his death to his heirs in fee, or by words to that effect, the conveyance shall be construed to vest an estate for life only in such first taker, and a remainder in fee-simple in his heirs." (See H. S. § 5544.) It is not competent under this section so to construe the above devise (*supra*, § 303) as to give a life estate to the first takers, remainder over in fee to the second takers: *Ibid*.

307. Under an absolute devise directly to the devisees without condition or limitation, and conveying an absolute vested remainder in fee so that no one holds any adverse interest, a restriction upon the right of the devisees to sell their interest or estate during a period named is invalid. The question of the validity of such a restriction upon the alienation of a remainder which is subject to an intervening life estate is precisely the same as it would be in case of a devise of the absolute fee: *Mandlebaum v. McDonell*, 29 M. 78.

308. Whether a condition imposed upon an estate in fee against alienation to certain specified persons, or to any but certain specified persons, could be sustained, *quere: Ibid*.

309. The rule against perpetuities was not infringed by the devise mentioned *supra*, § 224; *Goodell v. Hibbard*, 32 M. 47.

310. The rules against perpetuities do not depend on whether the interest devised is or is not vested: *Toms v. Williams*, 41 M. 552.

311. The statute (H. S. §§ 5553-5554) forbids accumulations of rents and profits "for a longer period than during the minority of the persons intended to be benefited thereby." *Held*, that this language is not inconsistent with a provision for accumulating until the youngest of several minors becomes of age: *Ibid*.

312. A will devised a mixed fund of realty and personalty to certain minors, but provided that a certain sum should be annually set aside from the income arising therefrom to free the realty devised from a lease which after testatrix's death had eighteen years yet to run, and would then have to be renewed for forty years unless the appraised value of improvements placed upon it by the lessee should be paid. The rest of the net income of the property was to be held in trust for the minors until the youngest should become of age. The will was *held* valid, and not in violation of the statutes against perpetuities: *Ibid*.

313. A lease provided for its own renewal in case the appraised value of buildings erected by the lessee should not be paid at its expiration. *Held*, that a provision in a devise covering this and other property, real and personal, by which a certain sum was to be annually set aside from the income of the whole to constitute a sinking fund to pay for the buildings, was not in violation of the statute against accumulations: *Ibid*.

314. Where a will creates vested interests subject to trusts that might otherwise suspend the power of alienation beyond two lives in being, the trusts would simply be void encumbrances and the estate would be left clear: *Ibid*.

315. The statute forbidding the accumulation of rents and profits is simply to prevent tying up real estate for purposes of accumulation during extended periods so that its continued rental might keep the property entire and undisposed of, and build up a considerable fund in connection with a landed estate: *Ibid*.

316. Accumulations under a will of the income of personal property for any number

of lives in being and for twenty-one years longer are not forbidden; nor are provisions restraining the alienation of personalty for such period: *Ibid.*

317. A will provided annuities for the testator's children, all of whom were under twelve years old at the time of his death, and it set aside certain real estate to be held "for the purpose of aiding in carrying out the trust." Otherwise it gave the executors a general power of sale. It also gives a residue to the children's children, after the death of all the children and on the majority of the youngest grandchildren, continuing the annuity of any deceased child to the children of such child until the division. *Held* that, as the reservation of the specified land and of the accumulations therefrom are void for any period beyond the minority of the youngest child (H. S. §§ 5553-4), the land goes to the heirs by intestacy, subject only to the accumulations so far as needed to pay the children's annuities—the rest, like the land, going to the heirs at law and not to the grandchildren: *Wilson v. Odell*, 58 M. 533.

318. P., whose daughter, C., was unmarried, but whose son, F., had seven children living, left by will a vast estate, largely lands, in trust, directing that one-half of the net income should be paid to F. during his life, the other half to C. during her life; that upon either's death one-half of the principal of the estate should be paid to his or her children in equal portions, but if either died without issue surviving, his or her share of the principal to be paid to the other's children upon such other's death, the entire income in the meantime to be paid to the survivor; that if any grandchild died before its father, F., or its mother, C., leaving issue, such issue should have the share of such grandchild; and that upon the death of either C. or F., the share of a minor grandchild should remain a part of the trust estate until such grandchild's majority. *Held*, by two of the justices, that this latter provision unduly restrained the power of alienation and was void; but the other two justices considered that the remote possibility of the death of all the son's children before his death, and marriage of the daughter and her death, leaving minor issue, suspending the power of alienation for more than two lives in being, would not render the trusts invalid during the life-time of the testator's children; and all concurred in holding that this clause, if invalid, would not defeat the rest of the will: *Palms v. Palms*, 68 M. 355.

319. A codicil to a will directed that the royalties and other moneys derived from the

leases of mineral lands should be considered as capital of the estate and should be invested as such by the trustees under the will, the income therefrom to be paid to the testator's two children, the accumulation therefrom not to continue longer than the minority of the testator's grandchildren "now living," after which the royalties and income should be paid to the testator's children. Whether this provision was valid or not, *quere: Ibid.*

320. In determining whether accumulations or restraints upon alienation directed by a will are valid, the magnitude of the estate cannot be considered: *Ibid.*

IX. AGREEMENTS TO MAKE WILLS.

321. Although a will may be revocable, an agreement for a sufficient consideration to provide by will for any given object does not differ from any other contract: *Faxon v. Faxon*, 28 M. 159.

322. An agreement whereby one undertakes to compensate another, by will or otherwise, for services to be rendered for him, out of his estate after his death, is binding on the estate of such person when deceased: *Sword v. Keith*, 81 M. 247. See CONTRACTS, §§ 193, 194.

323. A promise that money shall be paid after the promisor's death, and out of his estate, is not a testamentary disposition of property to be governed by the statute relative to the execution of wills. (See, as to the agreement, CONTRACTS, § 206): *Reithmaier v. Beckwith*, 85 M. 110.

324. An oral agreement to devise property to a specified person is voidable during the testator's life-time, and is not in itself valid if it covers real estate. And where the devise is not in accordance with the agreement, a payment of money in consideration of such promise is without consideration, and the money may be recovered back by the one who made the payment or by his personal representative: *De Moss v. Robinson*, 46 M. 62.

325. As to agreement to compensate by will for services, and subsequent destruction of will while testator incompetent, see *Leonardson v. Hulin*, 64 M. 1.

X. RIGHTS, ETC., OF DEVISEES AND LEGATEES.

As to the rights and liabilities of residuary legatee and executor, particularly where he has given bond to pay debts, etc., see ESTATES OF DECEDENTS, §§ 107, 108, 174, 186-188, 258-260, 264, 374-379, 429.

326. Where a devise is made to several persons, all standing in the same relation to the devisor, they are presumably equal holders: *Eberts v. Fisher*, 44 M. 551.

327. Unless an intention to the contrary appears, a will operates from the testator's death and estates vest at that time: *Proctor v. Robinson*, 35 M. 284; *Sutphen v. Ellis*, 35 M. 446; *Eberts v. Eberts*, 42 M. 404; *Rood v. Hovey*, 50 M. 395; *Porter v. Porter*, 50 M. 456; *Union Mut. Aid Assoc. v. Montgomery*, 70 M. 587.

328. A posthumous child takes under its parent's will and its interest vests at the testator's death: *Catholic Mut. Ben. Assoc. v. Firnane*, 50 M. 82; *Chambers v. Shaw*, 52 M. 18.

329. A child born after testator's death is entitled to share in a fund left for the benefit of the children of a designated person: *Knorr v. Millard*, 57 M. 265.

330. In the absence of any act of renunciation, acceptance of an unconditional devise or bequest is presumed: *Allison v. Smith*, 16 M. 405, 419.

331. Where executors have a bare power to sell lands in order to pass over the proceeds to devisees whose title is absolute and vested under the will, not only may all such devisees collectively, before the power of sale is executed, elect to take the land instead of the proceeds, according to their respective interests in the latter, but each of them may ordinarily so elect as to his own share. And this even though the will forbids an election: *Mandlebaum v. McDonell*, 29 M. 78.

332. Where there are no creditors legatees may make such distribution as they agree to among themselves, disregarding the will: *Foot v. Foote*, 61 M. 181.

333. Devisees and legatees whose devises and legacies are charged by the will for payment of debts can agree among themselves as to the proportion each shall bear and how it shall be ascertained: *Dennis v. Sharer*, 56 M. 224.

And see *CONTRACTS*, § 207; *EVIDENCE*, § 377.

Further as to the rights and liabilities of devisees and legatees, see *ESTATES OF DECEDENTS*.

As to advancements by testator, see *ESTATES, ETC.*, §§ 425-427; *EVIDENCE*, § 1737.

As to widow's election between dower and provision by will, see *DOWER*, §§ 63-65; *ESTATES, ETC.*, §§ 162, 445.

As to assessment for taxation of property devised or bequeathed, see *TAXES*, §§ 197, 198, 188.

WITNESSES.

See *EVIDENCE*, III.

WORDS AND PHRASES.

For the definitions of subjects that form main titles in this Digest, see those titles.

Definitions of the various crimes, see *CRIMES*, III.

Judicial notice taken of meaning of current words and phrases: See *EVIDENCE*, §§ 1033-1036.

That a word has acquired a peculiar meaning in a certain business may be shown: See *CUSTOM AND USAGE*, § 12.

Proof of custom allowed to establish meaning of word of doubtful signification: See *CONTRACTS*, § 850.

What words are actionable: See *LIBEL*, §§ 1-16; *SLANDER*, §§ 1-7.

1. **Abandon:** To "abandon" a child (H. S. § 9105) means to forsake, to leave without the intention to return to, to renounce all care or protection of: *Shannon v. People*, 5 M. 89.

2. **Actions** as used in the schedule to the constitution — which provides that all writs, actions, prosecutions, etc., shall continue — include all civil actions pending in court at the time, whether at law or in equity: *Scott v. Smart's Executors*, 1 M. 297.

3. So, H. S. § 1506, providing that in any "action" on negotiable paper given on an usurious consideration a *bona fide* purchaser without notice may recover, applies to suits in chancery as well as to actions at law: *Coatsworth v. Barr*, 11 M. 199.

4. **Actual contest:** The natural import of these words in connection with the proceedings to prove a will is that such proceedings were not entirely *ex parte*: *Turnbull v. Richardson*, 69 M. 409.

5. **Actually employed capital and loans:** 9 M. 451. See *TAXES*, § 129.

6. **Actual possession** for quieting title: 44 M. 580. See *EQUITY*, § 444.

7. **Actus Dei** to release one from performing contract must be such as renders performance impossible; prevalence of small-pox does not excuse from paying school teacher: 43 M. 482. See *SCHOOLS*, § 153.

8. **Adjacent:** One whose land is half a mile distant is not an "adjacent" occupant or proprietor: *Continental Imp. Co. v. Phelps*, 47 M. 302.

9. **Adoption** is the act by which relations of paternity and affiliation are recognized as legally existing between persons not related by nature: *Morrison v. Sessions*, 70 M. 297 (May 18, '88).

Adverse possession: See this heading in the Index.

10. **Afternoon**, properly speaking, signifies the time from noon until evening; but "eleven in the afternoon" is not regarded as an impossible time: *People v. Husted*, 53 M. 626.

11. **Agent**, in Const., art. 16, § 24, which provides that a suitor shall have the right to prosecute or defend "by an attorney or agent of his choice," is synonymous with attorney: *Cobb v. Superior Court Judge*, 43 M. 290.

12. It is competent to show that those who sell pianos of a particular make are called in the trade "agents," though they buy and sell on their own account: *Whittemore v. Weiss*, 33 M. 351.

13. "Agents" of a railroad company in respect to its liability for non-fencing include all persons in its employment; *e. g.*, a contractor for track grading: *Gardner v. Smith*, 7 M. 421. Also another railroad operating the road under contract: *B. C. & E. S. R. Co. v. Austin*, 21 M. 399.

14. "Agent" upon whom process against corporation may be served: 33 M. 405; 39 M. 471; 49 M. 48; 55 M. 90; 63 M. 714. See **GARNISHMENT**, §§ 99-101; **PROCESS**, §§ 53-55.

15. "Agent" unlawfully soliciting insurance: 50 M. 244. See **CRIMES**, § 587.

15a. **Aid and abet**, though not present: 5 M. 84. See **CRIMES**, § 76.

16. **Alley**: 32 M. 111; 38 M. 291; 43 M. 355. See **CITIES AND VILLAGES**, §§ 256-258.

17. **Ancestor** in H. S. § 5776a: 25 M. 188. See **ESTATES**, § 466.

18. **Annual meeting** as applied to township: 13 M. 426.

Appendage: See "Necessary," *infra*, § 187.

19. **Appropriated**: Lands "appropriated" were held to mean lands disposed of so that the state had parted with the title: *People v. State Land Office Commissioner*, 23 M. 278.

20. **Assess** means to set, fix or charge: *Seymour v. Peters*, 67 M. 418.

21. **Assigns**: 49 M. 21. See **PUBLIC LANDS**, § 128.

22. **Attendance by a physician**: 65 M. 318. See **INSURANCE**, § 61.

23. **Bakery** includes oven and oven fixtures: *Neib v. Hinderer*, 42 M. 451.

24. **Becher business**: 40 M. 256. See **LIBEL**, § 51.

25. **Best**: Things may be "best" in the sense of ranking in the very first class, without being superior to each other: *Whittemore v. Weiss*, 33 M. 354.

26. **Betting** commonly means the putting of a certain sum of money or other valuable

thing at stake on the happening or not happening of some uncertain event: *Shaw v. Clark*, 49 M. 388.

27. **Billiard table** does not include cloth, balls, etc., unless shown to do so: *Hunt v. Strew*, 33 M. 90.

28. **Champerty** defined: *Backus v. Byron*, 4 M. 538; *Roberts v. Cooper*, 20 How. (U. S.) 484.

29. **Change or limit and lessen or abridge** are expressions of similar import: *Feige v. M. C. R. Co.*, 62 M. 6.

30. **Channel** of a stream is the bed over which its waters run or a passage-way between banks through which they flow: *Benjamin v. Manistee River Imp. Co.*, 42 M. 637.

31. **Charity**: All the necessary or usual work connected with religious worship is work of "charity," and may lawfully be done on Sunday; *e. g.*, the taking of subscriptions to buy or build church to meet in: *Allen v. Duffie*, 48 M. 9.

32. **Chattels**: This word denotes property and ownership: *People v. Kent*, 1 D. 47.

33. **Children**: This term includes all minors: *Flower v. Witkovsky*, 69 M. 375 (April 13, '88).

34. **Choses in action** include contracts, covenants and promises that confer on one party a right to recover a personal chattel or a sum of money from another by action; a mortgage debt is a "chose in action": *Sheldon v. Sill*, 8 How. (U. S.) 440.

35. **Citizens**: In ordinary parlance all persons are "citizens": 48 M. 325. See **LIBEL**, § 63.

36. While, for certain jurisdictional purposes, a corporation is called a "citizen" of the state which charters it, the rights of actual citizens anywhere else are denied to it: *Home Ins. Co. v. Davis*, 29 M. 240.

Civil cases: See **JURY**, § 73.

37. **Claim** may embrace actions sounding in tort as well as those founded upon contract: *Carne v. Litchfield*, 2 M. 342.

38. "Claims" embrace encumbrances, at least where they are in the nature of money charges: *Johnson v. Hollensworth*, 48 M. 143.

39. **Closed**: The requirement that a saloon shall be "closed" means that all sales shall be stopped and the traffic shut off effectually, so that drinking and the conveniences for drinking shall be no longer accessible: *Kurtz v. People*, 33 M. 279. And see **CRIMES**, §§ 627-631. Also, "Keep open," *infra*, § 166.

Cloud upon title: See **EQUITY**, §§ 468-482.

40. **Co-insurer** means fellow insurer: 61 M. 335. See **INSURANCE**, §§ 241, 242.

Commercial agent: See "Station agent," *infra*.

41. Commitment correctly describes the process by which a person is confined under the order of a court at any time before or after final sentence: *People v. Rutan*, 3 M. 49.

Committed or discharged (H. S. § 9055): See OFFICERS, § 305.

42. Competent or able to act: One interested is not: *Stockwell v. White Lake*, 22 M. 351.

43. Completion of a railroad: 34 M. 335. See RAILROADS, § 67.

44. Concealment of stolen property: 2 M. 424. See CRIMES, § 344.

45. Concubinage: This word and "prostitution," used in H. S. § 9098, have no common-law meaning, but in their popular sense cover all cases of lewd intercourse: *People v. Bristol*, 23 M. 127; *People v. Cummons*, 56 M. 545.

Condition: See CONVEYANCES, § 214.

46. Connected, used of societies, may be synonymous with "affiliated," and need not refer to an organic connection by charter: *Allison v. Smith*, 16 M. 433.

Contingent claims: See GARNISHMENT, § 53.

47. Contract: An action against an employee for failure to pay over moneys collected is one "arising upon contract:" *Stephenson's Case*, 32 M. 61.

48. A cause of action against a clerk for moneys embezzled may be laid as upon an implied contract: *Farmers' Nat. Bank v. Fonda*, 65 M. 536.

49. An action upon a lease is a "case arising upon contract:" *Dalton v. Laudahn*, 30 M. 851.

50. Contracting marriage (H. S. § 6209) means the actual forming of the marriage relation: *Frost v. Vought*, 37 M. 66.

51. Conveyance: The term "conveyance," as used in H. S. § 5883, includes mortgages and assignments thereof: *Burns v. Berry*, 42 M. 179.

52. Also sheriff's certificates of purchase at execution sales: *Atwood v. Bearss*, 45 M. 472; *Drake v. McLean*, 47 M. 103.

53. Also an ante-nuptial agreement conveying a present interest in lands: *Aultman v. Pettys*, 59 M. 487.

54. Corporate rights are distinct from "privileges:" 51 M. 183. See TAXES, § 130.

55. Counties and townships: This term includes cities, territorially at least: *Wayne County v. Detroit*, 17 M. 401.

56. Creditor: One who has a mere claim against another for damages for negligently setting a fire is not a "creditor:" *Hill v. Bowman*, 35 M. 192.

And see *infra*, §§ 65-69.

Criminal offences, cases, prosecutions: See CRIMES, §§ 1-3, 669-678.

57. Cross-walks extend for the whole distance between the extended boundaries of intersecting streets: *O'Neil v. Detroit*, 50 M. 135. See "Sidewalks," *infra*.

58. Cumber differs from "encroach:" *Grand Rapids v. Hughes*, 15 M. 57.

59. Currency means money current by law, or paper equivalent in value circulating in the business community at par: *Phelps v. Town*, 14 M. 379.

60. "Currency" means "money:" *Black v. Ward*, 27 M. 194.

61. Current funds mean such funds as are current by law: *Phoenix Ins. Co. v. Allen*, 11 M. 508.

Curtilage: See CRIMES, §§ 47, 48, 228, 229, 247-249.

62. Cuttings on the line of a railroad: 29 M. 436. See CONTRACTS, § 427.

63. Dam: A "dam" is an obstruction to the natural flow of the water in a river; a structure built to preserve and protect such flow is not a "dam" within the meaning of H. S. § 9168: *People v. Gaipe*, 23 M. 94.

Damages by the elements: See *infra*, § 84.

64. Dealer: A "dealer" is one who makes successive sales as a business: *Overall v. Bezeau*, 37 M. 507.

65. Debt: A "debt" is that which one person is bound to pay to another, either presently or at some future period; a right to a dividend from the profits of a corporation is no "debt" until the dividend is declared: *Lockhart v. Van Alstyne*, 31 M. 78.

66. A claim for damages sounding in tort is not a "debt" until prosecuted to judgment: *Hill v. Bowman*, 35 M. 192.

67. A claim for damages from a libel is not a "debt" until entry of judgment on the verdict against the publisher: *Detroit P. & T. Co. v. Reilly*, 46 M. 468.

68. An unadjudicated claim against a corporation carrier for an injury to a passenger from its employee's negligence is not a "debt contracted" by the corporation: *Bohn v. Brown*, 33 M. 263.

69. Liabilities of a company which may give causes of action against it and so result in judgments, but which do not constitute present debts, were not within C. L. 1871, § 2858, making the directors of manufacturing companies individually liable for "debts" on their neglect to file reports, etc.: *Lockhart v. Van Alstyne*, 31 M. 78.

70. Advances by a testator are not to be treated as "debts:" *McClintock's Appeal*, 58 M. 156.

71. **Deed:** "Any deed" includes a deed of mortgage: *People v. Caton*, 25 M. 391.

72. **Define:** To "define" territorial limits covers an extension: *Attorney-General v. Bradley*, 86 M. 452.

73. **Design to cause death:** 65 M. 551. See INSURANCE, § 217.

74. **Discharge of a mortgage** means a discharge of record, not mere payment: *Blackwood v. Brown*, 29 M. 484.

75. **Discount** is an advance of money to be repaid at a future day, the interest being paid in advance: *Bailey v. Murphy*, W. 425.

76. **Disinterested persons for appraisers:** 20 M. 218; 34 M. 521; 40 M. 659. See ANIMALS, § 26; ATTACHMENT, § 111; EXECUTIONS, § 140.

77. **Dissolve and disband** are synonymous: *Briggs v. Borden*, 71 M. — (June 22, '88).

78. **Dividend:** 31 M. 79. See CORPORATIONS, § 41.

Domicile: See that title.

79. **Double costs:** 22 M. 19. See COSTS, § 25.

80. **Due** may be synonymous with "owing" or "remaining unpaid:" *Fowler v. Hoffman*, 31 M. 219.

Due process of law: See CONSTITUTIONS, §§ 21, 22.

81. **Duress** defined: 45 M. 574. See CONTRACTS, §§ 125-127.

Dwelling-house: See CRIMES, §§ 47, 48, 226-229, 247-249; PROCESS, § 27.

82. **Dying without issue:** 47 M. 221. See WILLS, § 273.

83. **Effect:** To "effect" a sale means to be the procuring cause thereof: *McCreery v. Green*, 88 M. 184.

84. **Elements:** Damage by the elements covers destruction by fire occurring without traceable fault: *Van Wormer v. Crane*, 51 M. 366.

85. **Embezzlement** denotes the wrongful appropriation and use of what came into possession rightfully: *Taylor v. Kneeland*, 1 D. 72. And see CRIMES, §§ 322-327.

86. **Eminent domain:** 23 M. 474. See CONSTITUTIONS, § 223.

87. **Employ** primarily means "to occupy the time, attention and labor of; to keep busy at work," etc.; and it is in this sense, rather than as meaning "to engage one's services," that H. S. § 9149 uses the word: *People v. McKinney*, 10 M. 83.

88. **Encroach:** Encroaching upon a public street means the actual enclosure of a portion of the street by fences or walks, or occupa-

tion by buildings: *Grand Rapids v. Hughes*, 15 M. 57.

89. **Encumbrance** is anything which constitutes a burden upon the title: *Post v. Campau*, 42 M. 94.

90. **Equally** may mean "alike:" 16 M. 215. See EVIDENCE, § 1709.

91. **Escheat** defined: *Crane v. Reeder*, 21 M. 70.

92. **Establish a school:** 28 M. 157. See TRUSTS, § 121.

93. **Estate in possession:** 19 M. 122; 44 M. 558. See PARTITION, § 21.

94. **Estate on condition:** 1 D. 252; 31 M. 49. See CONVEYANCES, § 211.

95. **Eviction:** 38 M. 375; 40 M. 571. See CONVEYANCES, §§ 351, 354.

96. **Evidences of debt** (H. S. § 8716): *Tripp v. Curtenius*, 86 M. 499.

Excessive fines: See CONSTITUTIONS, §§ 131, 132.

97. **Execution:** The "execution" of a note refers only to its actual making and delivery: *Freeman v. Ellison*, 37 M. 462.

Writ of execution: See EXECUTIONS, §§ 10, 11.

98. **Expenses and interest:** 53 M. 443. See CONTRACTS, § 429.

99. **Expose:** 5 M. 90. See CRIMES, § 521.

100. **Extend time:** 55 M. 136. See EQUITY, § 1125.

101. **Extinguishment of state debt:** 45 M. 162. See SCHOOLS, § 97.

102. **Family** may mean the husband and wife having no children and living alone together, or it may mean children, or wife and children, or blood relatives, or any group constituting a distinct domestic or social body: *Carmichael v. Northwestern Mut. Ben. Assoc.*, 51 M. 496.

103. A young woman who had lived for many years in an old man's household and had been treated by him as a daughter, was regarded as a member of his "family" though not related to him by blood or marriage: *Ibid.* See *Watson v. Watson*, 49 M. 542.

104. Children above the age of twenty-one years who have no home except with their father may be regarded as part of his "family:" *Stilson v. Gibbs*, 53 M. 282.

105. One man is not a member of another's "family" merely because of army comradeship, intimate friendship, and living for some years in his house: *Supreme Lodge Knights of Honor v. Nairn*, 60 M. 54.

Fellow-servants, who are: See NEGLIGENCE, §§ 150-155; RAILROADS, §§ 393-395.

106. **Fermented liquors** include hard cider: *People v. Foster*, 64 M. 716.

107. Ferry: A ferry is a public highway or thoroughfare across a stream of water or river by boat instead of by bridge: *Chilvers v. People*, 11 M. 51.

Final decrees, orders, judgments, hearings: See those headings in the Index.

108. Folio: A legal folio is 100 words: *Thornton v. Sturgis*, 38 M. 642.

109. Forest products in tax-law do not cover standing timber: *Fletcher v. Alcona*, 71 M. — (Oct. 19, '88).

110. Franchise: A franchise is a special privilege existing in an individual by grant of the sovereignty, and not otherwise exercisable: *Mayor v. Park Commissioners*, 44 M. 602, 604.

111. A city's right to take possession of and improve as a public park lands lying outside of the city is a public franchise: *Ibid*.

112. Holding a public market is an important public franchise: *Taggart v. Detroit*, 71 M. — (June 22, '88).

113. The right of keeping a ferry is a franchise: *Chilvers v. People*, 11 M. 53; *Kitson v. Ann Arbor*, 26 M. 331; *Billings v. Breinig*, 45 M. 70.

114. So is the power of appointment to office: *Frey v. Mitchie*, 68 M. 329 (Jan. 26, '88).

115. Freeholder: 38 M. 95. See SCHOOLS, § 46.

Fugitive from justice (H. S. § 9555): See CRIMES, § 768.

116. Furnish recruit: 27 M. 345. See ARMY, § 14.

117. Furniture: 14 M. 512. See CHATTEL MORTGAGE, § 43.

118. Game includes quail and other wild fowl or birds fit for food: *People v. O'Neil*, 71 M. — (July 11, '88).

119. Games include every contrivance or institution that has for its object to furnish sport, recreation or amusement: *People v. Weithoff*, 51 M. 214.

120. Gaming commonly applies to playing with stakes at cards, dice or other contrivance to see which shall be the winner and which the loser; a contract for the purchase of options is not gaming in this sense: *Shaw v. Clark*, 49 M. 388.

121. Laying a stake on the chances of a game is "gaming:" *People v. Weithoff*, 51 M. 210.

122. General election: *People v. Knight*, 13 M. 426; *Westinghausen v. People*, 44 M. 268.

123. General or special agent of railroad company does not mean a "ticket agent:" *L. S. & M. S. R. Co. v. Hunt*, 39 M. 471.

124. Good cause: This term, as contract ground for revocation, is legally uncertain and ineffective: *Cummer v. Butts*, 40 M. 324.

124a. "Good cause" for new action: 46 M. 27. See JUSTICES OF THE PEACE, § 315.

125. Good faith, as used in H. S. § 7365, subd. 8, in reference to the ownership of claims offered as set-off, means merely that the demands shall be actually and not colorably owned by defendant; it does not exclude a purchase by him at a discount: *Smith v. Warner*, 16 M. 398.

126. Goods when used in contradistinction to real estate include all kinds of removable personal property, and even bills, notes, certificates of stock, etc.: *Curtis v. Phillips*, 5 M. 113.

127. Goods in [the] store include only the merchandise and commodities kept on hand for the purposes of sale, and exclude a safe kept in the store for the merchant's private use: *Ibid*.

128. Goods, wares and merchandise include animate property: *Weston v. McDowell*, 20 M. 357.

129. Good-will: The "good-will" of a business is the favor its management has won from the public and the probability that old customers will continue their patronage and commend it to others: *Chittenden v. Witbeck*, 50 M. 420; *Myers v. Kalamazoo Buggy Co.*, 54 M. 222.

130. Grading a street means to bring its surface to grade line, and includes excavation and filling: *Davies v. East Saginaw*, 66 M. 39.

131. Groceries may include spirituous liquors and alcohol: *Niagara Fire Ins. Co. v. De Graff*, 12 M. 135.

132. Guest of an inn: 12 M. 56. See INN-KEEPERS, § 7.

133. Guilty knowledge need not be actual, positive knowledge: *Bonker v. People*, 37 M. 9.

134. Habitual drunkard: 35 M. 210. See DIVORCE, § 91.

135. Half, when used in describing lands, e. g., north half, west half, etc., means half in quantity where nothing to show a contrary meaning appears: *Au Gres Boom Co. v. Whitney*, 26 M. 44; *Dart v. Barbour*, 32 M. 272; *Heyer v. Lee*, 40 M. 356; *Jones v. Pashby*, 48 M. 637; 62 M. 621. Unless the conveyance purports to be according to the United States survey: *Jones v. Pashby*, 62 M. 624.

136. Harbor: A harbor is an indentation in the coast of a lake, sea or ocean, extending into the country in such a manner as to form an inlet or bay, and sufficiently narrow between the headlands to afford protection to

vessels against the wind and storm upon the water: *People v. Kirsch*, 67 M. 542 (Nov. 10, '87).

137. Hearing: 28 M. 535. See COURTS, § 218.

138. Heir, as generally used, refers to one who takes an estate of inheritance himself: *Bailey v. Bailey*, 25 M. 188.

139. "Heirs" may mean "issue" or "children:" *Goodell v. Hibbard*, 32 M. 52; See *v. Dorr*, 57 M. 373.

140. "Heirs" in a will may include next of kin and legatees: *Hascall v. Cox*, 49 M. 440.

141. One is not an "heir" of another to whom he is not related by blood or marriage: *Carmichael v. N. W. Mut. Ben. Assoc.*, 51 M. 495.

142. A wife is not an "heir" of her husband: *Barnett v. Powers*, 40 M. 319.

143. A note payable to "the heirs of" F. means his "legal heirs" in the popular sense of that term; those persons who bear a relation to him that would constitute them his legal heirs were he to die: *Love v. Francis*, 63 M. 192.

144. "Lawful heirs" in its ordinary sense are those upon whom the law casts descent of property; the term *held* to exclude an adopted child: *Morrison v. Sessions*, 70 M. 297 (May 18, '88).

145. "Lawful heirs" *held* to exclude the widow of a childless testator: *Bailey v. Bailey*, 25 M. 188.

146. "Legal heirs" in a trust-deed giving them proceeds of realty need not be of ancestor's blood: *Henderson v. Sherman*, 47 M. 273.

147. Provision that a certain person shall share in a specific sum "with the rest of" testator's "heirs" means the heirs generally: *Turner's Appeal*, 52 M. 401.

148. A provision for the "heirs" of a person includes an estate of inheritance: *Paton v. Langley*, 50 M. 432.

The living can have no "heirs:" See MAXIMS, § 29.

149. Heretofore in a statute *held* applicable to cases arising after as well as before the passage of the act: *Whipple v. Saginaw Circuit Judge*, 26 M. 344.

150. Home defined: 62 M. 20. See DOMICILE, § 5.

151. Homicide means killing another: *John Hancock Mut. L. Ins. Co. v. Moore*, 34 M. 45.

152. Improved land: H. S. § 9174 does not mean land within a highway: *People v. O'Brien*, 60 M. 13.

153. Indians by descent: 9 M. 437. See TREATIES, § 18.

154. Indictment is often used to express any criminal prosecution: *Bailey v. Kal. Pub. Co.*, 40 M. 255. See LIBEL, § 103.

Inferior as applied to courts: See JURISDICTION, §§ 78, 82, 83; COURTS, § 125.

Inland navigation does not apply to the great lakes: See SHIPPING, § 49.

155. Inn defined: *Carter v. Hobbs*, 12 M. 56.

156. Insanity is not a term of the law: *People v. Finley*, 38 M. 483.

157. Insolvent: One is "insolvent" when he is unable to pay his debts as they mature in the ordinary course of his business, although his assets exceed his liabilities: *Munson v. Ellis*, 58 M. 335.

158. Interpleader bill defined: 35 M. 35. See EQUITY, § 338.

159. Intoxicating beverages include strong beer and ale: *People v. Hawley*, 3 M. 338.

160. Irregularity is the want of adherence to some prescribed rule or mode of proceeding: *Turrill v. Walker*, 4 M. 133.

161. An "irregularity" in legal proceedings is such a defect as may be waived: *Jenness v. Lapeer Circuit Judge*, 42 M. 471.

162. Irreparable injury as a ground of equitable jurisdiction is not necessarily such injury as is incapable of pecuniary measurement: *Willmarth v. Woodcock*, 58 M. 485.

163. "Irreparable injury" cannot be predicated of the mere enforcement of a money demand: *Youngblood v. Sexton*, 32 M. 410.

164. What constitutes such injury: 38 M. 51. See NUISANCE, § 37.

164a. Island means a body of land surrounded by water; submerged land is not an "island:" *Webber v. Pere Marq. B. Co.*, 62 M. 635.

165. Keeper: One who treats a dog as living at his house, and undertakes to control his actions, is his "keeper" within the meaning of H. S. § 2119: *Burnham v. Strother*, 66 M. 521.

166. Keep open: To "keep open" a saloon, within the meaning of an ordinance forbidding stores, shops, saloons, etc., from being kept open on Sunday, implies a readiness to carry on the usual business therein; and if this business is not within the exceptions of the ordinance, the offence is committed: *Lynch v. People*, 16 M. 477. See "Closed," *supra*, § 39.

167. Labor: The service of an assistant chief engineer of a railroad company is not "labor:" 39 M. 48. Nor is that of a contractor or subcontractor: 39 M. 597; 44 M. 540; 62 M. 463. Nor of a traveling salesman: 50 M. 328.

168. **Land poor** means that one has a great deal of unproductive land, and perhaps that he has to borrow money to pay taxes; but a man "land poor" may nevertheless be largely responsible: *Matteson v. Blackmer*, 46 M. 397.

169. **Latent**: "Latent" ambiguities are such as arise from circumstances *dehors* the instrument: *Bruckner's Lessee v. Lawrence*, 1 D. 27.

And see EVIDENCE, §§ 1361-1365.

170. **Law** emanates from the sovereignty and not from its creatures; city ordinances are not "laws": *Fennell v. Bay City*, 36 M. 190.

171. "Law of the land" means laws general in their operation and affecting all alike: *Sears v. Cottrell*, 5 M. 254.

Lawful or legal heirs: See *supra*, §§ 143-146.

172. **Legal holiday**: Christmas is: *Reith-miller v. People*, 44 M. 282.

173. **Legally issuable execution**: 50 M. 160. See APPRAL, § 486.

Legal representatives: See "Representatives," *infra*, § 261.

174. **Liability** that may be incurred by city: 59 M. 314. See CITIES AND VILLAGES, § 149.

175. **Liberty** is something more than the mere freedom from personal restraint; it includes the right to do as one pleases when not inconsistent with others' legal rights: *Kuhn v. Detroit Common Council*, 70 M. 587 (June 8, '88).

176. **Like**: This term applies to the character as well as to the details of proceedings: *People v. Jackson*, 8 M. 112.

177. **Loan** is an advance of money to be repaid at a future day, and is distinguished from "discount" because the interest is payable in future: *Bailey v. Murphy*, W. 425.

178. **Local improvements** do not cover towers for electric lighting: *Putnam v. Grand Rapids*, 58 M. 423.

179. **Malice** is a wicked intent to do an injury: *People v. Petheram*, 64 M. 265.

180. It need not be actual personal ill-will, but designates a wilful injury without just reason: *Maclean v. Scripps*, 52 M. 221. A wrongful act done intentionally without just cause or excuse: *Bell v. Fernald*, 71 M. —.

181. **Malice aforethought** means malice existing at any time before the act so as to be its moving cause or concomitant: *Nye v. People*, 35 M. 19.

182. **Malicious** means wilful, wanton or reckless: *Hamilton v. Smith*, 39 M. 239.

183. **Manufacture** does not necessarily

imply a chemical change; preparing ice for use is a "manufacturing" business: *Attorney-General v. Lorman*, 59 M. 164.

Mill-tally: See CONTRACTS, § 852.

184. **Money**: United States or other bonds are not included in this term: *Waterman v. Waterman*, 34 M. 491.

185. A note payable in Canada "currency" is payable in "money": *Black v. Ward*, 27 M. 194.

186. **More or less**: A call for 500,000 feet of lumber, more or less, held satisfied by 473,000 feet: *Holland v. Rea*, 48 M. 221.

Navigable: See WATERS, §§ 1-19.

187. **Necessary appendage** for school-house: 36 M. 407; 62 M. 107. See SCHOOLS, §§ 82, 83.

188. **Horse not necessary for infant**: 50 M. 478. See INFANTS, § 30.

189. **Necessity**: Mere convenience of time and opportunity cannot be the test as to whether work done on Sunday is work of "necessity": *Allen v. Duffie*, 43 M. 6. See "Charity," *supra*.

190. **Negotiable** does not necessarily imply more than that the paper possesses the negotiable quality: *Robinson v. Wilkinson*, 38 M. 301.

191. **Next general election**: 44 M. 268. See CONSTITUTIONS, § 17.

Nominal condition in deed: See CONVEYANCES, §§ 225-227.

192. **Notice in writing**: Printing surfaces: *Pelton v. Ottawa Supervisors*, 52 M. 520.

193. **Nullity** in legal proceedings is such a defect as cannot be waived: *Jenness v. La-peer Circuit Judge*, 42 M. 471. See "Void," *infra*.

194. **Obstructions** in a public way are impediments to travel and passage placed therein, and tending to make its use difficult or dangerous; they differ from encroachments, and power to impose penalties for the former would not include power to impose them for the latter: *Grand Rapids v. Hughes*, 15 M. 54, 57.

195. **Nothing** is a punishable "obstruction" of an alley which does not interfere with its accustomed use: *Beecher v. People*, 38 M. 291.

196. **Occupy**: To be an "occupant" of premises one need not have his home thereon: *Tweed v. Metcalf*, 4 M. 586; *Burroughs v. Goff*, 64 M. 468.

197. "Occupancy" may consist of cultivation and use, without actual residence, or may be by a tenant: *People v. State Treasurer*, 7 M. 370.

198. To be an "occupant" so as to be held liable for not building fence one must be in

possession and have use and control of the land; merely boarding or living thereon is not enough: *Carpenter v. Vail*, 86 M. 229.

199. "Occupancy" does not require continuous presence: *Stupetsky v. Transatlantic F. Ins. Co.*, 48 M. 874; *Shackelton v. Sun Fire Office*, 55 M. 292.

200. "Occupied as a town site:" *Selby's Case*, 6 M. 204.

201. Reservation of use and "occupancy:" 89 M. 421. See CONVEYANCES, § 238.

202. Office or public trust: 58 M. 217. See CONSTITUTIONS, § 707.

202a. Official bonds: Executors' bonds are not: 58 M. 237.

203. On or about a day named is just as consistent with a day or two after as before: *Paine v. State Land Office Commissioner*, 66 M. 248.

204. Organized: A British company licensed to do business in New York is not a corporation "organized" there: *Employers' Liability Assurance Co. v. Insurance Commissioner*, 64 M. 617.

205. Outlaw, used by parties with reference to a mortgage, means the time when, in law, it would be presumed paid: *Curtis v. Goodenow*, 24 M. 22.

206. Owner: This term may include one who has a claim or interest in the property, even though it is an undivided interest or falls short of absolute ownership in fee: *Lozo v. Sutherland*, 88 M. 171.

207. There may be "ownership" without actual residence: *People v. State Treasurer*, 7 M. 370.

208. Paving: The obligation assumed by a street railway company to "pave" its track does not bind it to excavate with reference to grade: *Fort Street & E. R. Co. v. Schneider*, 15 M. 74.

Penal laws, what are: See CONSTITUTIONS, §§ 137, 141; STATUTES, §§ 202, 204.

209. Penalty may, it seems, embrace costs and charges imposed upon those who violate police regulations: *Grover v. Huckins*, 26 M. 483.

210. Sums required to be paid by the owner of beasts distrained are in the nature of a "penalty:" *Marx v. Labadie*, 51 M. 605.

211. Person is applicable to a corporation: *Turnbull v. Prentiss Lumber Co.*, 55 M. 393.

212. Personal property: Ice is: *Higgins v. Kusterer*, 41 M. 825.

213. Standing timber is not: *Fletcher v. Alcona*, 71 M. — (Oct. 19, '88).

214. Persons beyond seas: This includes persons out of the state, even though not out

of the United States: *Hulburt v. Merriam*, 8 M. 149.

215. Pettifogging shyster: 40 M. 256. See LIBEL, § 52.

216. Place of publication: The territory of a city, village or township — all parts of it alike, and disregarding all inferior subdivisions — within which a newspaper is published, is the "place of publication" within the meaning of the statutes which require notices to be published in particular localities: *Hinchman v. Barnes*, 21 M. 559.

217. Plate does not embrace articles of ordinary use, such as forks and tea and table-spoons, whatever may be the material, but only the more pretentious articles that are displayed on the tables of the wealthy or ostentatious: *Hanover Fire Ins. Co. v. Mannasson*, 29 M. 317.

218. Plural: Words implying the plural may be construed to include the singular; the greater includes the less: *Hitchcock v. Hahn*, 60 M. 462.

219. A plural noun may be taken as singular in meaning: *Barnes v. Michigan Air Line R. Co.*, 54 M. 245.

220. Words implying the singular may be construed to include the plural: *Hammond v. Baker*, 89 M. 473; *Holcomb v. Tift*, 54 M. 648.

221. Positive proof: 7 M. 387. See EVIDENCE, § 1459.

222. Possessed is a variable term in law; it may imply a temporary interest in lands or a corporal having, or merely property as owner, in which sense it may be used even though an intruder has excluded the owner for the time; it may also be used when the intruder's possession is apparently subordinate to that of the general owner: *Mayor v. Park Commissioners*, 44 M. 603.

223. Preponderance of evidence: See EVIDENCE, § 1458.

224. Presence: A person's "presence" does not depend upon whether he can be distinctly seen or discerned by another ("In the presence of an officer," see CRIMES, § 790): *People v. Bartz*, 58 M. 495.

225. "In the presence of the testator:" 19 M. 505; 59 M. 147. See WILLS, §§ 52, 53.

Probable cause: See MALICIOUS PROSECUTION, § 17.

226. Process is a writ issued by some court or officer executing judicial powers: *Tweed v. Metcalf*, 4 M. 588.

227. Professional employment: This term relates to those occupations only that are universally classed as professions, the general duties and character of which courts

must be expected to understand judicially: *Pennock v. Fuller*, 41 M. 155.

228. A mere agency to establish a claim and procure its adjustment and payment by the government is not a professional employment: *Bronson v. Newberry*, 2 D. 52.

229. Nor is an agency to sell sewing machines: *People v. McAllister*, 19 M. 217.

230. Nor an agency to sell real estate: *Pennock v. Fuller*, 41 M. 155.

Prohibit: See "*Regulate*," *infra*, § 255.

231. **Property** involves the right of beneficial use and the right to exclude others from use: *Grand Rapids Booming Co. v. Jarvis*, 30 M. 320.

232. "Property" does not consist merely of the title and possession; the right to contract a debt, or to enter into a bond or other writing, is a property one: *Kuhn v. Detroit Common Council*, 70 M. 537.

233. "Property" may include every species of ownership, whether in possession or action; a bequest of "property" may, however, exclude *choses in action* when that is the evident intent: *Jameson's Appeal*, 1 M. 102.

234. The right to avoid one's contract for non-stamping is not "property": *Gibson v. Hibbard*, 13 M. 219.

235. A right in action that comes into existence under common-law principles, and is not given by statute as a mere penalty, is "property": *Dunlap v. Toledo, A. A. & G. T. R. Co.*, 50 M. 474.

236. A right of action is as much "property" as a corporeal possession: *Power v. Harlow*, 57 M. 111.

237. A term for years is as clearly "property" as ownership in fee: *Grand Rapids Booming Co. v. Jarvis*, 30 M. 322.

238. The word "chattels" denotes "property": *People v. Kent*, 1 D. 47.

239. Money is "property": *People v. Williams*, 24 M. 161.

240. So is a certificate of stock: *Daggett v. Davis*, 53 M. 87.

241. So is the franchise of keeping a ferry: *Kilson v. Ann Arbor*, 26 M. 331; *Billings v. Breinig*, 45 M. 70.

242. So is a privilege to take toll: *Detroit v. Detroit & H. P. R. Co.*, 43 M. 148.

243. So are dogs: *Heisrodt v. Hackett*, 34 M. 284.

244. So is beer: *Kreiter v. Nichols*, 28 M. 498.

Prostitution: See "*Concubinage*," *supra*, § 45.

245. **Public purpose:** *People v. Salem*, 20 M. 485.

246. **Public road:** 28 M. 541. See **CONVEYANCES**, § 237.

247. **Public wharf** simply means a wharf belonging to the city: *Horn v. People*, 26 M. 224.

Purchaser: See this heading in the Index.

248. **Purpresture** defined: 34 M. 472. See **NUISANCE**, § 10.

249. **Question:** A question to be decided implies something in controversy or that may be the subject of controversy: *McFarlane v. Clark*, 39 M. 46.

250. **Real estate:** The interest of a tenant for years in lands is not "real estate": *Buhl v. Kenyon*, 11 M. 250. Nor is the right of possession of land for a term of years: *Grover v. Fox*, 36 M. 459.

251. Nor is the right of navigating public river "real estate": *Barnard v. Hinkley*, 10 M. 459.

Reasonable doubt: See **CRIMES**, §§ 1228-1235.

252. **Reasonable time** is so much as is necessary under the circumstances to do conveniently what the contract or duty requires in the particular case should be done: *Bowen v. Detroit City R. Co.*, 54 M. 501.

253. "Reasonable time" depends upon the circumstances of the case: *Clark v. Moyer*, 5 M. 472; *Stange v. Wilson*, 17 M. 8.

254. **Recognizance** is an obligation of record entered into before a court or officer duly authorized for that purpose: *Chink v. Muskegon Circuit Judge*, 58 M. 244.

255. **Regulate** and **prohibit** are not synonymous: *People v. Gadway*, 61 M. 291; *Hauck's Case*, 70 M. 407.

256. **Relations:** An infant's "relations" are said to be those who would, if he died intestate, be entitled to a distributive share of his estate: *Taff v. Hosmer*, 14 M. 257.

257. **Religious liberty:** 63 M. 405. See **CONSTITUTIONS**, § 151.

258. **Removal:** Removal of property beyond creditors' reach is not necessarily a manual transportation: *Nugent v. Goldsmith*, 59 M. 595.

Rent: See **LANDLORD AND TENANT**, §§ 176, 177.

259. **Repaving:** Repairing, where new materials are necessary, amounts to repaving, although not required by the whole street: *Fort Wayne & E. R. Co. v. Detroit*, 34 M. 79.

260. **Representative** is one chosen by a principal to exercise for him a power or perform for him a trust: *Park Commissioners v. Detroit*, 28 M. 245.

261. "Legal representatives" in a will may

mean lawful heirs: *Rivenett v. Bourquin*, 58 M. 13.

262. Reputation is what others hear of one's character: *Bathrick v. Detroit P. & T. Co.*, 50 M. 642.

263. Required for the public use is synonymous with "necessary:" *F. & P. M. R. Co. v. D. & B. C. R. Co.*, 64 M. 860.

264. Residence: A person is ordinarily held to reside on all the parcels of land that are actually appurtenant to his house: *Hedley v. Leonard*, 35 M. 76.

Further, see the heading "Residence" in the Index.

265. Resort means to visit frequently: *O'Brien v. People*, 28 M. 214.

266. Restaurant is a place where refreshments may be had: *Richards v. Washington F. & M. Ins. Co.*, 60 M. 426.

See "Saloon," *infra*, §§ 271, 272.

267. Return of process may mean the return day thereof, instead of the actual return: *Aldrich v. Maitland*, 4 M. 211.

268. Right accrued: A former remedy is not, necessarily: *Robinson v. The Red Jacket*, 1 M. 175.

269. Running at large: Cattle in anybody's charge are not "running at large:" *Bertwhistle v. Goodrich*, 53 M. 459; *Blanck v. Hirth*, 56 M. 332.

270. Salary: 32 M. 276. See CONTRACTS, § 401.

271. Saloon means a place of refreshment, not necessarily a place where intoxicating liquors are sold: *Kitson v. Ann Arbor*, 26 M. 326; *Mount Pleasant v. Vansice*, 43 M. 363; *Wolf v. Lansing*, 53 M. 369. The latter meaning, however, held to be intended by a certain city ordinance: *Dewar v. People*, 40 M. 403.

272. A "saloon" is supposed to be a place where persons who call for them are supplied with refreshments; pool-tables, therefore, are not necessary in connection with the saloon business: *Goozen v. Phillips*, 49 M. 8.

Satisfactory: See CONTRACTS, § 469; SALES, §§ 287-290.

272a. Separate instruments may be on the same paper: *Trombly v. Parsons*, 10 M. 274.

273. Serious is not generally used to signify a dangerous condition, but rather to define a grave, important or weighty trouble. Bright's disease of the kidneys is not only a serious but a dangerous disease: *Brown v. Metropolitan L. Ins. Co.*, 65 M. 315.

274. Service of execution includes sale when necessary to make the money called for by the writ: *Peck v. City National Bank*, 51 M. 359.

275. Settled and occupied as used in the pre-emption laws refers to a *bona fide* use and occupation of the land: *Selby's Case*, 6 M. 204.

276. Settlement: The words "settlement of account" held to mean no more than "applied on account:" *Widner v. Western Union Tel. Co.*, 51 M. 296.

277. "Settlement" of estate: 41 M. 412. See WILLS, § 265.

278. "Settlement" of a pre-emptor: 29 M. 150. See PUBLIC LANDS, § 36.

Shop: See "Store," *infra*.

279. Shore is the land between high and low tide: *Lorman v. Benson*, 8 M. 27.

280. Sidewalk in a street is the walk in front of a man's lot so far as the lot extends, but no further: *O'Neil v. Detroit*, 50 M. 135.

281. Sign off: 14 M. 186. See CONTRACTS, § 516.

282. Signs and furniture: 14 M. 512. See CHATTEL MORTGAGES, § 43.

Singular: See "Plural," *supra*.

283. Sound health: 65 M. 314. See INSURANCE, § 163.

284. Specific taxes: 34 M. 276. See TAXES, § 96.

285. State officers: Probate judges are not "state officers" in the sense in which the statutes use that term: *Secord v. Foutch*, 44 M. 90.

286. States, in H. S. § 4325, include none but members of our Union: *Emp. Liability Assur. Co. v. Ins. Comm'r*, 64 M. 616.

287. Station agent means an agent locally in charge of the station or depot, and excludes a "commercial agent:" *Detroit v. W., St. L. & P. R. Co.*, 63 M. 714.

288. Stock is not necessarily limited to live-stock: 39 M. 482. See CONTRACTS, § 403.

289. Stock in trade may include cars appurtenant to the business: *Comstock v. Grand Rapids*, 54 M. 646.

Storage, property in: See TAXES, §§ 173-175.

290. Store is commonly used as the equivalent of the English "shop;" it applies to the building, and a restaurant and bakery may be carried on in a building insured for use as a "store:" *Richards v. Washington F. & M. Ins. Co.*, 60 M. 425.

291. A devise of "stores" may pass the ground they stand upon: *Toms v. Williams*, 41 M. 559.

292. Street: A "street" includes the whole width of public way: *Brevoort v. Detroit*, 24 M. 325.

293. Street improvement: A sewer is not: *Clay v. Grand Rapids*, 60 M. 456.

294. Subject-matter: The "subject-matter" of a litigation is the right which one party claims as against the other and which he demands the judgment of the court upon: *Jacobson v. Miller*, 41 M. 98.

Subsequent purchaser: See RECORDING ACTS, § 185.

295. Suicide means self-killing, and cannot be restricted so as to apply only to a wrongful act or self-murder: *John Hancock Mut. L. Ins. Co. v. Moore*, 34 M. 45.

296. Supplies furnished a vessel do not include "materials:" *Lawson v. Higgins*, 1 M. 226.

297. Support: The building of a house in whole or part cannot be considered a part of the "support" of the person who is to occupy it: *Morford v. Dieffenbaacker*, 54 M. 603.

298. Surety defined: 35 M. 48. See SURETYSHIP, § 2.

299. Survivorship: "Surviving" children mentioned in a will are those surviving at testator's death: *Toms v. Williams*, 41 M. 554; *Eberts v. Eberts*, 42 M. 406; *Porter v. Porter*, 50 M. 460. See *Rood v. Hovey*, 50 M. 400; *Rivenett v. Bourquin*, 53 M. 10.

Taxes, what are, see TAXES, §§ 1-10.

300. Tenancy, when exists: 24 M. 284. See LANDLORD AND TENANT, § 1.

Tenant at will: See LANDLORD, ETC., § 36.

Tenant by sufferance: See LANDLORD, ETC., § 50.

301. Thrown into bankruptcy implies an adjudication: *Wilcox v. Toledo & A. A. R. Co.*, 45 M. 282.

302. Test of qualification for office: 58 M. 217. See CONSTITUTIONS, § 707.

303. Third offence: 29 M. 474. See CRIMES, § 606.

304. Title is that which makes the foundation of the ownership of property, real or personal; *e. g.*, title to a debt consists in the facts which, taken together, created the contract relations of the parties thereto: *Hunt v. Eaton*, 55 M. 865.

305. To often has a meaning nearly synonymous with "towards," although its ordinary meaning is not satisfied unless the point or object is actually attained: *Moran v. Lesotte*, 54 M. 87.

306. Tolls at common law include a large class of dues and exactions that are in the nature of fixed rights, and cannot be lawfully exceeded, and are generally, if not universally, connected with some franchise which involves duties as well as privileges of a general or public nature, such as those which belong to

fairs, markets, mills, turnpikes, ferries and bridges: *McKee v. Grand Rapids & R. L. St. R. Co.*, 41 M. 279.

307. "Tolls" are the compensation for the use of another's property or of improvements made by him: *Sands v. Manistee River Imp. Co.*, 128 U. S. 288.

308. Townships: Whether may not be used in generic sense, including "cities:" *Wayne County v. Detroit*, 17 M. 401. See *supra*, § 55.

309. "Township," as used in H. S. § 1008, includes "ward:" *Comstock v. Grand Rapids*, 54 M. 645. See *Birby v. Steketee*, 44 M. 618.

310. Township charge: 8 M. 880. See TOWNSHIPS, § 39.

311. Township expenses: 36 M. 220. See TOWNSHIPS, § 40.

313. Travelled part of the road: 28 M. 48. See HIGHWAYS, § 150.

314. Treasury: Moneys in the official custody or subject to the official control of the state treasurer are in the "treasury" in the sense of H. S. § 9149: *People v. McKinney*, 10 M. 86.

Trial: See COURTS, §§ 218-221.

Undue influence: See WILLS, §§ 84-41.

Unusual punishments: See CONSTITUTIONS, § 131.

315. Use of moneys may mean enjoyment, not simply interest: *Patterson v. Stewart*, 38 M. 404.

316. Assignment of the "use" of premises did not pass rents: *Spicer v. Bonker*, 45 M. 636.

317. Bequest of "use" of personality; whether did not give power of disposal: *Sutphen v. Ellis*, 35 M. 450.

318. Goods gotten "for use" in business: 49 M. 427. See CHATTEL MORTGAGE, § 47.

319. Reservation of "use" of premises: 39 M. 421. See CONVEYANCES, § 238.

320. Used means "employed:" *Moore v. American Transp. Co.*, 24 How. (U. S.) 87.

321. Vacant or unoccupied: 43 M. 374; 55 M. 292. See INSURANCE, §§ 199, 200.

322. Vagrancy: 41 M. 801. See CRIMES, § 485.

323. Value may be used to signify "cost price:" *Neib v. Hinderer*, 43 M. 453.

324. Vicinage (whence jurors are drawn) means the county: *Convers v. Grand Rapids & I. R. Co.*, 18 M. 468.

325. Vicinity of city: 53 M. 87. See CONTRACTS, § 407.

326. Village, as contemplated by Const., art. 16, § 2 (exempting village lot for homestead), is not necessarily an incorporated village; *semble*: *Bouchard v. Bourassa*, 57 M. 10.

327. Visible and apparent, as applied to means of support, are words of similar meaning: *People v. Herrick*, 59 M. 565.

328. Void: Though a statute declares an act to be "utterly void" it may be voidable only; no act is utterly void, and consequently a mere nullity, which takes effect for some purpose: *Fox v. Willis*, 1 M. 321, 325.

329. Action which the legislature declares "void" on grounds of general policy is void to all intents; but if the manifest purpose of the law is to protect individuals in their own rights they only can take advantage of it: *Beecher v. Marquette & P. R. M. Co.*, 45 M. 108.

330. Volunteer: A substitute is not a "volunteer:" 25 M. 343. See ARMY, § 13.

331. Warranty deed means a deed with covenant of general warranty: *Dwight v. Cutler*, 3 M. 577; *Allen v. Hazen*, 26 M. 145; *Gault v. Van Zile*, 37 M. 23.

332. White male citizens: 14 M. 414. See CONSTITUTIONS, § 367.

333. Wilful: Wilfully obstructing ditch: 54 M. 180. See DRAINS, § 85.

334. "Wilful" disobedience means more than a conscious failure to obey; it involves a wrong or perverse disposition, so as to render the conduct unreasonable and inconsistent with proper subordination: *Shaver v. Ing-ham*, 58 M. 654.

Workmanlike manner: See CONTRACTS, §§ 519-521.

335. Written: The words "written" or "in writing" may be construed to include printing, except where the written signature is required by law: *Pelton v. Ottawa Supervisors*, 52 M. 520.

336. Witness's mark upon deed — he being unable to write — suffices: *Brown v. McCormick*, 28 M. 217.

337. Wrought or unwrought marble: 4 M. 619. See CONTRACTS, § 351.

ADDENDA.

For reference in the table of cases and the index, additional notes are here given from two federal cases that were not reported until after the final arrangement of the manuscript of the digest had been made; also from several decisions (*Day v. Cole*, *Tompkins v. Hitchcock*, *Wright v. Dickinson* and *Zabel v. Harshman*) which, though reported — considerably in advance of their chronological order, however — in 65-69 Mich., were not rendered until after the publication of the first volume of this work; and, finally, from the original opinion in *Carver v. Detroit & Saline Plank R. Co.*, 69 M. 616, an old case which was reported on rehearing in 61 Mich.

AGENCY.

Ratification: Effect: Vendor's liability. Though ratification of agency by co-vendor in land-contract executed for him on parol authority is insufficient under statute of frauds to validate contract, it is sufficient as to receipt of money on joint account, and renders party jointly liable to refund to vendee payments made by latter: *Wright v. Dickinson*, 67 M. 590.

Ratification: Evidence. As tending to prove ratification or adoption by co-vendor of vendee's payments on land-contract executed on parol authority, jury in action by vendee to recover back such payments may consider, in determining whether there is a joint liability, the fact that such vendor approved the contract in writing after payments had been made, and that he joined with co-vendor in suit for balance of purchase money: *Ibid*.

ASSUMPSIT.

Recovery of payments: Void land-contract. A vendee in a land-contract that is void and incapable of ratification may recover in *assumpsit* what he has paid less benefits received from the land while in his possession under the contract, and the whole controversy may be adjusted in this common-law proceeding: *Wright v. Dickinson*, 67 M. 590, 590.

BILLS AND NOTES.

Corporation note: Indorsement: Extraneous evidence. Where a note is signed "Peninsular Cigar Co. [a corporation], Geo. Moebs, Sec. and Treas.," and is payable to and

indorsed by "Geo. Moebs, Sec. and Treas.," the note and indorsement are the corporation's, there is no individual liability on the indorsement, and the indorsement, being unambiguous, cannot be explained by parol: *Falks v. Moebs*, 127 U. S. 597.

CONSTITUTIONS.

Obligation of contracts: Alteration of charter: Police regulations. A plank-road company's charter though not alterable until after thirty years is subject even during that time to reasonable and proper police regulations that may be enacted to preserve and keep from injury the lives and health of the people: *Carver v. Detroit & Saline P. R. Co.*, 69 M. 616.

CONTRACTS.

Performance: Commissions to dealer: Province of jury. In an action by a furniture dealer for commissions orally agreed to be paid to him by a customer above wholesale or dealers' rates to be procured for him by plaintiff from wholesale dealers (see *CONTRACTS*, vol. I, p. 332, § 522), testimony was given to the effect that plaintiff in the customer's presence requested the head salesman of a wholesale dealer to let the customer have the goods at the prices they would be sold to plaintiff, which were the same as wholesale or dealers' rates, that the salesman said he would do so, and that he did sell. *Held*, that the jury was justified in finding that the furniture was furnished at dealers' rates, and that it was for the jury to determine whether the testimony — which was disputed — was true or not, and

also to find from all the testimony what the agreement between the parties was: *Tompkins v. Hitchcock*, 69 M. 123.

CONVEYANCES.

Attestation. Conveyance by two grantors held sufficiently witnessed as to both, where signatures of witnesses as to one grantor preceded, and as to the other followed, a memorandum of interlineation: *Culbertson v. Witbeck Co.*, 127 U. S. 326.

Acknowledgment: Certificate: Identity. If officer taking acknowledgment is satisfied as to parties' identity, court cannot inquire into evidence basing his conclusion; and it seems that his certificate stating that he is "satisfied" that the parties appearing before him "are the grantors," etc., is sufficient: *Ibid.*

Identity of parties: Acknowledgment out of state: Authenticating certificate. At any rate, where the conveyance so certified is of Michigan land and is executed in another state, it is shown to be valid when there is attached thereto a certificate of the proper clerk certifying to such officer's official character and to the fact that the acknowledgment was made according to the laws of such other state: *Ibid.*

DIVORCE.

Third parties cannot be made defendants in a divorce suit unless they have conspired with the husband to transfer property subject to complainant's claim for alimony, to third persons, with intent to defraud her out of her interest in such property held by reason of her marital rights in the same: *Peck v. Uhl*, 66 M. 592. See *Peck v. Peck*, 66 M. 536.

DRAINS.

Location: Jurisdiction: Former drain. A township drain commissioner has no jurisdiction to locate a township drain upon the line of a drain laid by the county drain commissioner, unless such first drain has been legally vacated or abandoned: *Zabel v. Harshman*, 68 M. 273.

Establishment: Notice: Collateral attack. Where the record of the proceedings to establish a county drain shows that no notice was given to parties interested of the application to the judge of probate for the appointment of commissioners to ascertain the necessity for such drain and to appraise the damages, such proceedings cannot be sus-

tained if assailed by any party interested before the drain is built and the assessments therefor raised and paid over; but they are not open to collateral attack after acquiescence for fifteen years: *Ibid.*

Establishment: Officers de facto: Collateral attack. Where county drain commissioners assume to act as such they are at least officers *de facto*, even though they were supervisors when they were appointed; and their action within the scope of the authority conferred upon county drain commissioners cannot be attacked collaterally: *Ibid.*

Establishment: Acquiescence. A drain that was located, established and constructed under color of statute by county drain commissioners, its cost being paid by the parties assessed without objection as to any illegality or irregularity, and that has been in use and acquiesced in as a public drain for fifteen years or more, must be regarded by the township drain commissioner as a public drain, duly and legally established: *Ibid.*

Construction: Conditions precedent. Before a drain is constructed a release of the right of way and of damages must be obtained, or a condemnation must be had and the compensation therefor ascertained: *Ibid.*

EQUITY.

Jurisdiction: Amount involved. The mere fact that a foreclosure decree is for \$50 too much does not give chancery jurisdiction of a bill in the nature of a bill of review attacking such decree: *Sanford v. Haines*, 71 M. —.

Decree: Estoppel. A complainant cannot be estopped by wrong reasons given for a correct decree in his favor in a former suit brought by himself: *Zabel v. Harshman*, 68 M. 273.

Bill of review: Leave to file: Laches. A petition for leave to file a bill in the nature of a bill of review will not be granted unless the court sees reason to believe that its allegations can be sustained by proof. Such a petition denied where no such reason appeared, and for laches: *Day v. Cole*, 65 M. 154.

Bill of review: Laches. A bill of review should be filed within the time allowed for appealing, unless grounded on newly-discovered evidence, or where there is some satisfactory reason for the delay: *Sanford v. Haines*, 71 M. —.

Same: Security: Verification. A bill attacking a foreclosure decree and sale, and seeking leave to redeem, is in effect a bill in

the nature of a bill of review; and where it is filed after long delay, and without security, and is neither verified nor accompanied by a sworn showing, should be dismissed: *Ibid.*

ERROR.

What reviewable: Objections not taken below. The objection that a record offered in evidence is not certified by the register of deeds cannot be raised on error unless made upon the trial below: *Culbertson v. Witbeck Co.*, 127 U. S. 326.

EVIDENCE.

Relevancy and materiality: Pleading in former suit. Where a vendor in a contract to sell land which was executed by his co-vendor without sufficient authority has joined with the latter in a suit against their vendee to recover the unpaid purchase money, so much of the pleadings in such suit as are necessary to show the joinder are admissible to prove a ratification of the co-vendor's doings on the contract, and as tending to establish a joint liability: *Wright v. Dickinson*, 67 M. 590.

Materiality: Files of former suit: Where an injunction's issue and service are material in a subsequent action at law between the same parties there is no error in admitting in such action the files of the injunction suit where there is nothing in the balance of the files harmful to the objecting party: *Ibid.*

Materiality: Competency. Where the controversy was whether lumbering on certain lands ceased in 1873, a witness testified that subsequently he worked upon lands the government description of which he could not give, but which he had pointed out to another witness. *Held*, that the latter witness, after testifying that the lands were so pointed out to him, and that he knew the descriptions, could give the same: *Ibid.*

Materiality: Hearsay. Where one party to an action claims that he stopped cutting timber on certain lands because served with an injunction, which claim and the fact of service the other party denies, the testimony of witnesses that they had heard of such service, offered to fix the date when the cutting

was suspended, but which is unnecessary for that purpose, is inadmissible: *Ibid.*

Relevancy: Competency. Where the validity of a tax and of a deed based thereon is involved, it is admissible to show the payment of unlawful additional compensation to certain judges out of the tax-levy where the records show the tax was raised for the purpose of such payment: *Culbertson v. Witbeck Co.*, 127 U. S. 326.

Competency: Record of will: Foreign probate. A record from the registry of deeds of a county in this state containing a certified copy of a will executed and probated in another state is admissible in evidence where it recites that a copy of the will and of the probate thereof duly authenticated were presented to the probate court here; that due notice of hearing was given by publication, and that said copy was duly admitted to record upon full proof: *Ibid.*

NEGLIGENCE.

What constitutes: Degree of care. Where the danger is to human safety the care required is such as may reasonably be regarded as enough to prevent the probability of mischief: *Carver v. Detroit & Saline P. R. Co.*, 69 M. 616.

Contributory negligence: Reasonable care: Circumstantial evidence: Province of court and jury. Direct or conclusive evidence is not necessary to show reasonable care on plaintiff's part to avoid the injury for which he seeks to recover. If the circumstances out of which the injury arose tend to show such care, the question is for the jury, and it must be a very extraordinary case that will justify the court in taking it from them: *Ibid.*

PRACTICE.

Admissions on trial: Construction. Counsel making on the trial of a case an admission that is so ambiguous that the court cannot determine its meaning is entitled to the benefit of the doubt, and has a right to put his own construction upon the language used; and the question is not to be submitted to the jury: *Wright v. Dickinson*, 67 M. 590.

TABLE OF CASES.

LIST OF ABBREVIATIONS

USED IN TABLE OF CASES AND INDEX.

Affid.	Affidavits.	Husb. & W.	Husband and Wife.
Alt. of Inst.	Alteration of Instruments.	Injunc.	Injunctions.
Appear.	Appearance.	Instruc.	Instructions.
Arbitr.	Arbitration.	Insur.	Insurance.
Assault & B.	Assault and Battery.	Intox. Liq.	Intoxicating Liquors.
Assign't.	Assignment.	Judgts.	Judgments.
Attach.	Attachment.	Jurisd.	Jurisdiction.
Att'y Gen.	Attorney-General.	J. P.	Justices of the Peace.
Att'y ...	Attorneys.	Landl. & T.	Landlord and Tenant.
Bailm.	Bailment.	Lim. of Ac. ...	Limitation of Actions.
Bankr.	Bankruptcy.	Mal. Pros.	Malicious Prosecution.
Bills & N.	Bills and Notes.	Mandam.	Mandamus.
Breach of Pr.	Breach of Promise.	Mast. & Serv.	Master and Servant.
Capias ad Resp. ...	Capias ad Respondendum.	Mortg.	Mortgages.
Carr.	Carriers.	Neglig.	Negligence.
Chat. Mortg.	Chattel Mortgages.	Offic.	Officers.
Cities & V.	Cities and Villages.	Parent & Ch.	Parent and Child.
Common L.	Common Law.	Pay. & Disch.	Payment and Discharge.
Conf. of L.	Conflict of Laws.	Physic.	Physicians.
Conspir.	Conspiracy.	Plank R.	Plank-roads.
Const.	Constitutions.	Plead.	Pleadings.
Convey.	Conveyances.	Prac.	Practice.
Corp.	Corporations.	Pub. Lands.	Public Lands.
Crim. Con.	Criminal Conversation.	Quo War.	Quo Warranto.
Custom & Us.	Custom and Usage.	Railr.	Railroads.
Dam.	Damages.	Real Prop.	Real Property.
Eject.	Ejectment.	Record.	Recording Acts.
Eq.	Equity.	Recoup.	Recoupment.
Est. of Dec.	Estates of Decedents.	Relig. Soc.	Religious Societies.
Estop.	Estoppel.	Replev.	Replevin.
Ev.	Evidence.	Spec. Perf.	Specific Performance.
Excep.	Exceptions.	Stat. of F.	Statute of Frauds.
False Impr.	False Imprisonment.	Tax.	Taxes.
Forc. Ent., etc. ...	Forcible Entry and De- tainer; Summary Pro- ceedings for Recovery of Lands in other Cases.	Tenants in Com. .	Tenants in Common.
Garnish.	Garnishment.	Town.	Townships.
Guard.	Guardianship.	Tresp.	Trespass.
Habeas Corp.	Habeas Corpus.	Tresp. on Case. .	Trespass on the Case.
		Univ.	University of Michigan.
		Vend.	Vendors.
		Words & Phr.	Words and Phrases.

TABLE OF CASES.

Following is an alphabetical arrangement of the cases contained in this digest. It includes the decisions that have appeared or will appear in the Michigan reports down to the latter part of volume 71, together with Michigan cases decided by the federal supreme court down to 130 U. S. The table shows the volume and page of the official report of each case, and for the cases from the as yet unpublished volumes — 70 and 71 Mich.— references are made to the Northwestern Reporter, blanks being left to be filled up hereafter with the regular paging.

Entries in the table of cases are made not only by names of the moving parties — plaintiffs, complainants, relators, petitioners, etc.— but also, inverting the usual titles, by names of the defendants or respondents. Sometimes three or four entries are given for the same case, and cross-references are supplied in many instances where opinions vary as to the proper title. If the officially reported title of a case differs from what was used in digesting it before the report was published, both titles are given in the table, changes in spelling being noted unless altogether unimportant. Parties' names are spelled as the report presents them, and, in general, the titles chosen by the reporters have been followed within the limitation necessarily imposed by a convenient alphabetical system.

That which has been considered to be the regular title of each case appears in the table in bold-faced type. Under this are stated the titles and sections of the digest wherein the case is mentioned, some of the titles being abbreviated in accordance with the list found on the preceding page. The absence of such titles and sections indicates that the case, though found in the reports, contains nothing from which a proposition of law is deducible, or that it merely follows a previous case without comment or discussion.

Finally, under each case from our own state reports are given all the references to that case made by the court or a member thereof in subsequent Michigan or federal (supreme court) cases, by the volume and page where such reference occurs. Cases cited only in briefs of counsel, or in reporters' notes, are excluded. If a case has been reversed, disapproved, modified or affirmed on error or appeal, the fact is stated accordingly, but otherwise the word "cited" is usually deemed sufficient, leaving the reader to ascertain for himself, as he should do in any event, whether the case in question has been followed, approved, quoted as authority, distinguished, or merely mentioned. For these citations the official reports to and including 131 U. S. and 70 Mich. (as far as page 400), also 75 and 76 Mich., have been examined.

REFERENCES ARE TO TITLES AND SECTIONS.

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| <p>Abbe, Curtis v., 39 M. 441.</p> <p>Abbey, Plumer v., 39 M. 167.</p> <p>Abbott v. Abbott, 41 M. 540. Ev., 1186, 1490; Wills, 164-107.</p> <p>Abbott v. Alsdorf, 19 M. 157. Appeal, 304; Convey., 161; Eq., 1111.</p> <p>Abbott, Durfee v., 61 M. 471.</p> <p>Abbott, Fewlase v., 28 M. 270.</p> <p>Abbott, Galpin v., 6 M. 17.</p> <p>Abbott v. Godfroy's Heirs, 1 M. 178. Const., 16; Eq., 12, 592; Est. of Dec., 56; Mortg., 9, 374, 494, 560. Cited: 5 M. 218; 57 M. 271; 76 M. 506.</p> <p>Abbott v. Gregory, 39 M. 68. Eq., 617, 818; Mortg., 17; Notice, 64; Trusts, 217. Cited: 48 M. 250.</p> | <p>Abbott v. Mathews, 26 M. 176. Costs, 310, 321; Error, 47, 432; Judgts., 10; Reference, 10, 18, 32, 49. Cited: 30 M. 485; 48 M. 241.</p> <p>Abbott, Probate Judge v., 50 M. 278, 479.</p> <p>Abbott v. Wayne Circuit Judge, 55 M. 410. Lim. of Ac., 207; Plead., 578. Cited: 57 M. 27.</p> <p>Abeel v. Hubbell, 52 M. 37. Arbitr., 26; Forc. Ent., etc., 32; Landl. & T., 50.</p> <p>Abel, Crane v., 67 M. 242.</p> <p>Abell v. Munson, 18 M. 306. Contracts, 457; Ev., 713; Instruc., 195; Stat. of F., 102, 134. Cited: 18 M. 393; 32 M. 107, 275; 41 M. 298; 61 M. 547; 63 M. 492; 65 M. 287.</p> <p>Abels v. Ingham Supervisors, 42 M. 526. Const., 704; Counties, 84; Offic., 14.</p> <p>Aber v. Bratton, 60 M. 357. Replev., 56, 321.</p> |
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- Ackerman v. Ackerman**, 45 M. 135.
- Ackley v. Sager**, 30 M. 264. Case Made, 25, 32.
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- Adair v. Cummin**, 48 M. 375. Appeal, 277; Eq., 669, 757, 1079, 1356, 1412; Ev., 315; Fraud, 89; Partition, 57-60. *Cited*: 59 M. 76; 60 M. 621; 64 M. 531.
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- Adams, Matter of**, 7 M. 452. Ev., 1596.
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- Adams v. Abram**, 38 M. 304. Attach., 77; Costs, 150. *Cited*: 38 M. 395; 42 M. 594; 44 M. 3; 58 M. 211.
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- Adams v. Auditor-General**, 43 M. 453. Eq., 697; Tax., 542; Town., 142.
- Adams v. Bowman**, 51 M. 189. Dam., 248; Ev., 1396; Prac., 259. *Cited*: 61 M. 635.
- Adams v. Bradley**, 12 M. 346. Eq., 685; Mortg., 128, 559; Notice, 21; Record., 91; Set-off, 66; Tenants in Com., 42; Trusts, 46, 84. *Cited*: 34 M. 224; 40 M. 601; 41 M. 190; 49 M. 503; 55 M. 248; 62 M. 527; 69 M. 266; 92 U. S. 172.
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- Adams v. Niemann**, 46 M. 135. Chat. Mortg., 21, 25, 54; Fraud, 106, 123. *Cited*: 46 M. 316; 60 M. 430; 63 M. 101; 66 M. 498.
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- Atterbury, Payne v.**, H. 414.
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- Attorney-General v. Detroit**, 26 M. 263. Att'y-Gen., 4; Cities & V., 184, 185; Eq., 612; Estop., 227. *Cited*: 26 M. 446; 55 M. 183.
- Attorney-General v. Detroit**, 55 M. 181. Att'y-Gen., 10; Eq., 173. *Cited*: 58 M. 421, 423.
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- Attorney-General v. Regents of the University**, 30 M. 473. University, 10.
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- Beam v. Bennett**, 51 M. 148. Costs, 240; Eq., 357, 406.
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- Bissell, Rasch v., 53 M. 455.
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- Blackwood v. Van Vleet, 11 M. 252. Const., 161; Eject., 42; Eq., 420, 428; Injunc., 69, 103. *Cited*: 22 M. 359; 39 M. 731; 41 M. 426; 49 M. 573; 51 M. 34, 241; 54 M. 411; 66 M. 334.
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- Blair v. Compton, 33 M. 414. Appeal., 15; Corp., 53; Ev., 1565; Executions, 34, 110, 120; Process, 4. *Cited*: 45 M. 209; 46 M. 2.
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- Blanchard v. Powers, 42 M. 619. Tax., 264, 683, 685. *Cited*: 43 M. 368; 75 M. 136.
- Blanchard v. Quartermaster-General, 47 M. 644. See *People v.*, etc., *infra*.
- Blanchard v. Tittabawassee Boom Co., 40 M. 566. Bills & N., 119; Pay. & Disch., 154.
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- Bolt v. Frederick**, 56 M. 20. Dam., 535; Ev., 2099; Master & Serv., 8; Set-off, 92. *Cited*: 69 M. 359.
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- Botsford v. Murphy**, 47 M. 536. Chat. Mortg., 139, 153.
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- Boyce v. Stambaugh**, 84 M. 848. Ev., 1118, 1184.
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- Brennan v. Busch**, 67 M. 670. Error, 555; Prac., 70.
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- Brigham v. Brown**, 44 M. 59. Mortg., 82, 83; Record., 53-55.
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- Brownbridge v. People**, 38 M. 751. Crimes, 1333, 1340. *Cited*: 33 M. 756; 44 M. 372, 486; 49 M. 23.
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- Byrnes v. People, 37 M. 515. Crimes, 257, 766, 767, 806, 1022, 1825. *Cited*: 39 M. 210; 43 M. 419; 44 M. 307; 60 M. 119.
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- Carroll v. Rice, W.** 373. Contracts, 619; Eq., 97, 254, 417, 549; Fraud, 63; Vend., 63, 64. *Cited*: 15 M. 378; 31 M. 535; 60 M. 620.
- Carroll v. Safford**, 3 How. 441. Const., 333; Tax., 110.
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- 277, 278, 309, 311, 340, 360-363, 617, 675, 676, 697. *Cited:* 28 M. 356; 36 M. 223; 37 M. 103; 39 M. 205; 44 M. 563; 51 M. 344, 486; 56 M. 498; 60 M. 518, 589; 64 M. 344; 65 M. 398; 66 M. 219; 68 M. 12; 127 U. S. 335.
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- Chadwick v. Broadwell**, 27 M. 6. Liens, 90, 92, 93, 98, 99; Replev., 841. *Cited*: 66 M. 687, 688.
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- Chadwick v. Chadwick**, 59 M. 87. Appeal, 238, 309; Eq., 579, 636, 836; Ev., 1650, 1660; Trusts, 26, 34. *Cited*: 62 M. 613.
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- 36 M. 260; 52 M. 166, 167; 54 M. 208; 58 M. 489; 61 M. 339.
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- Chapman v. Crooks**, 41 M. 595. Convey., 208, 278; Estop., 238; Ev., 807. *Cited*: 43 M. 546.
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- Chapman v. Keystone Lumber & Salt Co.**, 20 M. 358. Assumpsit, 147; Waters, 201. *Cited*: 39 M. 350.
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- Chapoton v. Detroit**, 38 M. 636. Cities & V., 130; Statutes, 118. *Cited*: 39 M. 197; 46 M. 481; 51 M. 130.
- Chappee v. Thomas**, 5 M. 53. Appeal, 484, 524; Const., 37, 61. *Cited*: 9 M. 156; 11 M. 133, 184; 14 M. 446, 447, 453, 456, 457; 26 M. 188; 29 M. 430; 50 M. 490; 53 M. 203.
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- Chesebro v. Chesebro**, 21 M. 506. Affid., 18.
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- Clerk of Huron Circuit Court, *Wright v.*, 48 M. 642.
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- Colburn v. Colburn, 70 M. 647 (38 N. W. R. 607). Divorce, 3, 4, 81.
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References are to titles and sections.

- Daniel v. Robinson**, 66 M. 296. Stat. of F., 178. *Cited*: 66 M. 300.
- Daniel v. Robinson**, 66 M. 299. Stat. of F., 178.
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- Daniells v. Watertown**, 61 M. 514. Const., 220; Tax., 91. *Cited*: 68 M. 219.
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- Detroit v. Chaffee, 68 M. 635. Cities & V., 356; Const., 239. Cited: 76 M. 517.
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- Detroit v. Dean, 106 U. S. 537. Corp., 231; Courts, 133.
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- Detroit v. Heintz, 69 M. 167. Follows *Detroit v. Daly*, 68 M. 503, *supra*. Cited: 68 M. 638.
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- Detroit, Jackson v., 10 M. 248.
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- Detroit & Milwaukee R. Co., Freeman v., 65 M. 577.
- Detroit & Milwaukee R. Co., Griggs v., 10 M. 117.
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- Detroit City R. Co., Detroit v., 37 M. 558.
- Detroit City R. Co. v. Guthard**, 114 U. S. 133. Courts, 158.
- Detroit City R. Co., Wallace v., 58 M. 231.
- Detroit City Street R. Co. v. Guthard**, 51 M. 180. Statutes, 30; Tax., 130. *Cited*: 76 M. 426.
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- Detroit City Treasurer, People v., 8 M. 14.
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- Detroit Fire & Marine Ins. Co. v. Aspinall**, 45 M. 330. Eq., 529; Est. of Dec., 330; Mortg., 367. *Cited*: 48 M. 240.
- Detroit Fire & Marine Ins. Co. v. Aspinall**, 48 M. 238. Eq., 529; Mortg., 367.
- Detroit Fire & Marine Ins. Co. v. Benz**, 33 M. 298. Appeal, 63, 245; Eq., 1320; Mortg., 682. *Cited*: 49 M. 464; 66 M. 566.
- Detroit Fire & Marine Ins. Co. v. Saginaw Circuit Judge**, 23 M. 492. Actions, 41; Process, 51. *Cited*: 41 M. 601; 47 M. 51; 66 M. 186.
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- Detroit Free Press Co. v. Drs. K. & K. U. S. Med. & Surg. Assoc.**, 64 M. 605. Attach., 44, 214, 215.
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- Detroit, Grand Haven & M. R. Co., Cook v., 43 M. 349.
- Detroit, Grand Haven & M. R. Co., Crosby v., 53 M. 458.

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- Detroit, Grand Haven & M. R. Co. v. Hayt**, 55 M. 847. Costs, 102; Judgts., 51; Railr., 815. *Cited*: 59 M. 156; 61 M. 488.
- Detroit, Grand Haven & M. R. Co., Hughes v.**, 65 M. 10.
- Detroit, Grand Haven & M. R. Co., Kundinger v.**, 51 M. 185.
- Detroit, Grand Haven & M. R. Co., Lawless v.**, 65 M. 292.
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- Detroit Savings Bank v. Truesdail**, 36 M. 430. Appeal, 103, 203-206; Banks, 14, 15; Conf. of L., 46; Contracts, 120; Eq., 1351; Ev., 444, 1517; Interest, 107, 111, 113; Mortg., 294, 496, 595, 642, 723; Trusts, 150. *Cited*: 40 M. 526.
- Detroit Savings Bank v. Ziegler**, 49 M. 157. Assumpsit, 18; Offic., 218; Suretyship, 71. *Cited*: 55 M. 60; 61 M. 426.
- Detroit Sharpshooters' Assoc. v. Hamtramck Highway Commissioners**, 34 M. 86. Const., 240; Highways, 39, 56. *Cited*: 38 M. 661; 40 M. 177; 57 M. 554; 63 M. 19.
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- Detroit Transit R. Co., Walker v.**, 47 M. 333.
- Detroit Union R. etc. Co., Broderick v.**, 56 M. 261.
- Detroit Western Transit & J. R. Co. v. Backus**, 48 M. 532. Certiorari, 52. *Cited*: 69 M. 577, 580.

References are to titles and sections.

- Detroit Western Transit & J. R. Co. v. Crane**, 50 M. 182. Error, 371; Ev., 1035; Jury, 94; Railr., 168, 170, 174, 179, 223, 224. *Cited*: 50 M. 511.
- Detroit White Lead Works, Philadelphia Whiting Co. v.**, 58 M. 29.
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- Dewey v. Duyer**, 39 M. 509. Eq., 81.
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- Dewey, Flint & P. M. R. Co. v.**, 14 M. 477.
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- Dewey v. Ingersoll**, 42 M. 17. Mortg., 462, 463; Notice, 61; Record., 111, 112. *Cited*: 43 M. 475.
- Dewey v. Johnson**, 16 M. 490. Const., 560; Costs, 57.
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- Dewey v. State Board of Auditors**, 32 M. 191. Mandam., 148, 149. *Cited*: 38 M. 751; 42 M. 426; 47 M. 144.
- Dewey, In re Petition of, etc.**: See *Dwight v. Scranton, etc. Lumber Co.*, 69 M. 127, *infra*.
- Dewitt, Avery v.**, 71 M. — (40 N. W. R. 69).
- Dewitt, Johnson v.**, 36 M. 95.
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- Dickinson, Parsons v.**, 23 M. 56.
- Dickinson v. Port Huron & N. W. R. Co.**, 53 M. 43. Carr., 147; Railr., 419. *Cited*: 61 M. 593.

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- Dickinson v. Seaver**, 44 M. 624. Assign't, 27, 31; Conf. of L., 65, 66; Costs, 203, 313, 316, 325, 337; Eq., 190, 191, 559; Est. of Dec., 134; Fraud, 71; Judgts., 119; Jurisd., 124; Wills, 188. *Cited*: 45 M. 154; 52 M. 606; 64 M. 301, 351.
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- Dickinson v. Van Wormer**, 39 M. 141. Certiorari, 73; Drains, 4, 10, 81, 46; Statutes, 209. *Cited*: 39 M. 739; 40 M. 177, 178; 59 M. 76.
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- Dillin v. People**, 8 M. 357. Crimes, 1032, 1171, 1176; Error, 595; Ev., 2180. *Cited*, 51 M. 616; 120 U. S. 439.
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- Ellis v. Hutchinson**, 70 M. 154. Const., 600.
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- 575, 646; *Ev.*, 280, 891, 1885; *Replev.*, 302, 826.
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- Farmers' & Mechanics' Bank, Strong v., 4 M. 350.
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- Fletcher v. Thunder Bay River Boom Co.**, 51 M. 277. Plats, 4; Waters, 74, 92. *Cited*: 62 M. 636; 65 M. 50, 463.
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- Ford v. Detroit Dry-dock Co.**, 50 M. 358. Error, 435; Garnish., 6, 38, 39. *Cited*: 57 M. 123; 62 M. 320, 321; 63 M. 104.
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- Fort Wayne & Elmwood R. Co. v. Detroit**, 39 M. 548. Cities & V., 85.
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- Fowler v. Hoffman**, 81 M. 215. Accession, etc., 4; Chat. Mortg., 20, 27, 50; Contracts, 378; Ev., 1202; Instruc., 61; Prac., 158; Replev., 338. *Cited*: 36 M. 29; 38 M. 480; 60 M. 226; 66 M. 638.
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- Gibbs, People v., 70 M. — (38 N. W. R. 257).
- Gibbs, Stilson v., 40 M. 42, 46 M. 215, 53 M. 230.
- Gibbs v. Superior Court Judge, 53 M. 496. Plead., 489; Prac., 279.
- Gibson, Burrows v., 42 M. 121.
- Gibson v. Burrows, 41 M. 713. Actions, 127; Arbitr., 28, 65; Reference, 12. *Cited*: 51 M. 136.
- Gibson v. Cranage, 39 M. 49. Contracts, 469. *Cited*: 50 M. 570.
- Gibson, Denison v., 24 M. 187.
- Gibson, Galloway v., 51 M. 185.
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- Gibson v. Pelkie, 37 M. 380. Contracts, 117; Ev., 1330. *Cited*: 66 M. 576, 583.
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- Gibson v. Van Syckle, 47 M. 439. Costs, 296; Wills, 3, 46, 47.
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- Gidday v. Witherspoon, 35 M. 368. Offic., 191, 192; Replev., 282, 314, 365. *Cited*: 63 M. 349.
- Giddey v. Altman, 27 M. 206. Contracts, 588. *Cited*: 33 M. 96; 42 M. 11.
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- Giddey v. Uhl, 27 M. 94. Chat. Mortg., 44, 177.
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- Gies, Albrecht v. 33 M. 389.
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 Gilbert, Michigan Central R. Co. v., 46 M. 176.
Gilbert v. Showerman, 23 M. 448. Maxims, 41; Nuisance, 81. *Cited*: 31 M. 296, 298; 38 M. 49; 46 M. 547; 63 M. 407.
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- Glens Falls Ins. Co. v. Jackson Circuit Judge**, 21 M. 577. Certiorari, 12; Const., 150; Courts, 204; Insur., 18; Mandam., 40. *Cited*: 29 M. 239, 240.
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- Godfroy v. Disbrow**, W. 260. Convey., 2, 52; Ev., 1469; Notice, 49, 99, 121; Record., 3, 66, 148, 168. *Cited*: 22 M. 426, 427; 44 M. 18, 126; 45 M. 474; 62 M. 242.
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- Goodale v. Patterson**, 51 M. 582. Husb. & W., 150; Mortg., 334, 354; Record., 97. *Cited*: 66 M. 341.
- Goodale v. Portage Lake Bridge Co.**, 55 M. 418. Ev., 46, 47, 622, 1442; Neglig., 40; Plead., 353; Prac., 243. *Cited*: 61 M. 590.
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- Goodburn, Kimball v.**, 32 M. 10.
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- Goodenow, Curtis v.**, 24 M. 18.
- Goodenow v. Curtis**, 33 M. 505. Alt. of Inst., 15; Costs, 224; Eq., 1, 18, 1281; Mortg., 161, 971, 976. *Cited*: 40 M. 509; 48 M. 155; 60 M. 437.
- Gooderich v. Allen**, 19 M. 250. Ev., 1707.
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- Goodrich, Hill v., 39 M. 439.
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- Gordon v. Sibley, 59 M. 250. Certiorari, 174; Plead., 410. *Cited*: 66 M. 626.
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- Gould, Baughman v., 45 M. 481.

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- Gould v. Castel**, 47 M. 604. Eq., 1017.
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- Gould v. Day**, 94 U. S. 405. Convey., 148; Ev., 2171; Tax., 640.
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- Grand Rapids, Lyon v., 80 M. 258.
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References are to titles and sections.

- Grand Rapids, L. & D. R. Co. v. Weiden**, 69 M. 572. Certiorari, 53, 59, 182; Railr., 146-148. *Cited*: 70 M. 392.
- Grand Rapids, N. & L. S. R. Co. v. Alley**, 34 M. 16. Railr., 152, 153. *Cited*: 34 M. 19; 40 M. 385.
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- Greenwald v. Marquette, H. & O. R. Co.**, 49 M. 197. Railr., 391. *Cited*: 55 M. 59; 67 M. 66, 109.
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- Griswold v. Fuller**, Chaney's Digest, p. 735, § 6. Appeal, 173; Costs, 266a.
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- Groesbeck, Solomon v., 65 M. 540.
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- Hackley v. Headley**, 45 M. 569. Contracts, 125-128, 131, 362, 363; Pay. & Disch., 148. *Cited*: 47 M. 494; 50 M. 43; 54 M. 632; 59 M. 513.
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- Hall v. Harrington**, 41 M. 146. Eq., 938; Fraud, 7.
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- Hannahs, Fuller v., 44 M. 578.
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References are to titles and sections.

- Hunt v. Supreme Council of the Order of Chosen Friends**, 64 M. 671. Ev., 523, 909; Instruc., 157; Insur., 164, 165.
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- Hutchings v. Ladd**, 16 M. 493. Agency, 70, 91; Carr., 70-72; Dam., 32, 37. *Cited*: 47 M. 350; 54 M. 167; 56 M. 185, 194; 63 M. 305.
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- Huxford, Sanford v., 33 M. 313.
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- Insurance Commissioner, Hartford Fire Ins. Co. v.**, 70 M. — (38 N. W. R. 474).
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- 21 M. 285; 41 M. 221; 43 M. 249; 53 M. 315; 94 U. S. 412.
- Jackson v. Collins**, 39 M. 557. Dam., 240; Ev., 154; Plead., 649; Sales, 115. *Cited*: 49 M. 553; 51 M. 490; 54 M. 188.
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- Jackson Mining Co. v. Auditor-General**, 32 M. 488. Const., 399; Tax., 104. *Cited*: 38 M. 750; 107 U. S. 55.
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- James, Bourke v., 4 M. 636.
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- James v. Howard**, 4 M. 446. Offic., 71, 102; Statutes, 181, 184.
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- James v. Muir**, 33 M. 223. Stat. of F., 6. *Cited*: 35 M. 436; 51 M. 638; 67 M. 331, 398.
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- McCormick Harvesting Machine Co., Emerson, Talcott & Co. v.**, 51 M. 5.
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- McDonald v. Bewick**, 51 M. 79. Contracts, 59; Vend., 8. *Cited*: 58 M. 577.
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- McDonald v. Rifle Boom Co.**, 71 M. — (38 N. W. R. 681). Instruc., 266; Neglig., 134; Waters, 243.
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- Marquette, H. & O. R. Co. v. Langton**, 32 M. 251. Carr., 25; Dam., 170; Plead., 167; Railr., 38. *Cited*: 45 M. 54.
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- Michigan Mutual Life Ins. Co. v. Bowes, 42 M. 19. Estop., 185; Insur., 81, 131, 132; Pay. & Disch., 40. *Cited:* 44 M. 326.
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- Michigan Southern & N. I. R. Co., McMillan v., 16 M. 79.

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- Michigan Southern & N. I. R. Co., *People v.*, 4 M. 398.
- Michigan Southern & N. I. R. Co. v. Shurtz, 7 M. 515. Carr., 52, 53. *Cited*: 17 M. 300; 66 M. 148; 95 U. S. 44.
- Michigan Southern R. Co., Michigan Central R. Co. v., 4 M. 361, 19 How. 378.
- Michigan Southern R. Co., *People v.*, 3 M. 496.
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- Michigan State Bank v. Hammond, 1 D. 527. Banks, 88-85; Const., 174, 419, 421-423; Convey., 216; Eq., 1, 151, 610. *Cited*: 88 M. 750; 60 M. 43.
- Michigan State Bank v. Hastings, W. 9. Const., 419; Convey., 216; Injunc., 119; State, 1. *Overruled* (Const., 421): 1 D. 225. *Referred to*: 1 D. 534. *Cited* (Const., 419): 62 M. 412.
- Michigan State Bank v. Hastings, 1 D. 225. Banks, 86; Const., 174, 182, 419-421; Convey., 211, 216-218; Eq., 151, 610, 704, 1327; Trusts, 101; Vend., 28. *Explained and approved*: 1 D. 530-532. *Cited*: 2 M. 246; 31 M. 51; 38 M. 750; 42 M. 427; 47 M. 131; 56 M. 318; 60 M. 43; 62 M. 412.
- Michigan State Ins. Co. v. Lewis, 30 M. 41. Instruc., 207; Insur., 57, 63, 75, 207, 208. *Cited*: 83 M. 151; 70 M. 205, 208; 76 M. 264.
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- Michigan Stove Co., Weir v., 44 M. 506.
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- Midland Supervisors v. Auditor-General, 27 M. 165. Certiorari, 33. *Cited*: 42 M. 427; 54 M. 408.
- Midland Supervisors, Higgins v., 52 M. 16.
- Midland Supervisors, Roscommon v., 49 M. 454.
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- Miles v. Walker, 4 M. 641. *Overruled* (Tax., 610): 5 M. 462, 490, 491.
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- Millar v. Cuddy, 43 M. 273. Ev., 363; Mast. & Serv., 6; Prac., 138. *Cited*: 68 M. 210. *Qualified* (Prac., 143): 68 M. 211, 212.
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- Millard v. Lund, Jan. Term, 1857. Not reported. *Cited*: 5 M. 231.
- Millard, *People v.*, 53 M. 63.
- Millard, Ramsdell v., H. 378.
- Millard, Tarbell v., 63 M. 250.
- Millard v. Truax, 47 M. 251. Costs, 3; Mortg., 176, 181, 861, 862. *Cited*: 50 M. 345; 62 M. 472.
- Millard v. Truax, 50 M. 343. Costs, 3; Mortg., 176, 181, 861, 863, 865, 868, 944. *Cited*: 62 M. 472.
- Millbrook, White v., 60 M. 532.
- Miller v. Aldrich, 31 M. 408. Insur., 55, 105; Mortg., 12. *Cited*: 59 M. 92.
- Miller v. Amazon Ins. Co., 46 M. 463. Insur., 162.
- Miller, Bassett v., 39 M. 133.

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- Munck's Estate, In re**, 54 M. 325: See *Lyster's Appeal*, *supra*.
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- Error, 571; Estop., 225; Landl. & T., 26; Mortg., 225, 227, 228, 232, 527, 834, 846, 878. *Cited*: 65 M. 600.
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- Nelson v. McArthur**, 88 M. 204. Const., 437; Quo War., 53. *Cited*: 44 M. 9.
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- Nester v. Busch**, 64 M. 657. Convey., 597; Statutes, 249; Tax., 761-764. *Cited*: 70 M. 295.
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- Newman, Platt v., 71 M. — (38 N. W. R. 720).
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- Pendill v. Neuberger, 64 M. 290. *Ev.*, 1752, 1763, 1787; *Landl. & T.*, 220; *Plead.*, 186. *Cited*: 67 M. 566.
- Pendill v. Neuberger, 67 M. 563. *Ev.*, 1763; *Landl. & T.*, 100.
- Pendill v. Union Mining Co., 64 M. 172. *Eq.*, 431; *Landl. & T.*, 154-158, 160; *Mining*, 18.
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- Peninsular R. Co. v. Duncan**, 28 M. 130. Plead., 220; Railr., 86, 91-95; Statutes, 23, 50, 63.
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- Pennsylvania Mining Co. v. Brady**, 14 M. 260. Contracts, 572, 573; Error, 57, 448; Ev., 2151; Excep., 8; Plead., 472, 619; Prac., 238. *Cited*: 16 M. 333; 54 M. 875.
- Pennsylvania Mining Co. v. Brady**, 16 M. 332. Contracts, 567; Prac., 234. *Cited*: 17 M. 126, 280; 26 M. 199; 64 M. 675.
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- People v. Arnold**, 46 M. 268. Crimes, 98, 398, 403, 410-412, 415, 689, 805, 822, 1010, 1143, 1144. *Cited*: 60 M. 18.
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- People v. Auditor-General**, 9 M. 134. Taxes, 150, 290, 291. *Cited*: 38 M. 749; 65 M. 411.
- People v. Auditor-General**, 9 M. 141. Tax., 582, 583. *Cited*: 38 M. 749.
- People v. Auditor-General**, 12 M. 171. Pub. Lands, 176, 177. *Cited*: 68 M. 662.
- People v. Auditor-General**, 17 M. 161. Univ., 6, 8. *Cited*: 47 M. 51.
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- People v. Beadle**, 60 M. 22. Const., 605; Intox. Liq., 16. *Cited*: 67 M. 486.
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- People v. Bussell**, 59 M. 104. Crimes, 664; Statutes, 271, 290. *Cited*: 75 M. 622.

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- People v. Butler**, 55 M. 408. Crimes, 268; Ev., 1895.
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- People v. Cox**, 70 M. 247. Crimes, 629, 642, 932, 1231; Time, 1.
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- People v. East Saginaw, 40 M. 836: See *Gebhart v. East Saginaw, supra*.
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- People v. Kalamazoo Circuit Judge**, 39 M. 301: See *Fletcher v. Kalamazoo*, etc., *supra*.
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- People v. Michigan Southern R. Co.**, 3 M. 496. Const., 233; Railr., 113-115, 131. *Cited*: 3 M. 508; 47 M. 462.
- People v. Michigan Southern & N. I. R. Co.**, 4 M. 393. Tax., 125-127. *Cited*: 9 M. 450, 454, 459, 463; 46 M. 207, 210, 211. *Overruled in part, it seems* (Tax., 125, 126): 46 M. 193, 212.
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- 68 M. 237, 252; 66 M. 472, 474; 69 M. 429, 460.
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- People v. Miller**, 16 M. 205. Quo War., 93.
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- People v. Millspaugh**, 11 M. 278. Crimes, 583, 690. *Cited*: 27 M. 183, 222; 64 M. 699.
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- People v. Minnock**, 52 M. 628. Crimes, 610. *Cited*: 53 M. 530; 65 M. 67.
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- People v. Murray**, 52 M. 288. Const., 119; Crimes, 858; Ev., 204, 310, 971; Instruc., 97. *Cited*: 52 M. 250, 254; 60 M.
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- People v. Nankin Board of Registration**, 15 M. 156. Elections, 9; Mandam., 273. *Cited*: 49 M. 458.
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- People v. Niles**, 44 M. 606. Crimes, 958, 1027, 1271, 1279; Error, 661; Ev., 64, 669, 2098; Instruc., 9. *Cited*: 58 M. 602; 69 M. 475.
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- People v. O'Brien**, 60 M. 8. Crimes, 360-362, 1183, 1193; Ev., 203. *Cited*: 68 M. 469.
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- People v. Olmstead**, 30 M. 431. Const., 110; Crimes, 218-220, 828, 1199; Ev., 1901. *Cited*: 38 M. 252; 39 M. 360, 549; 43 M. 419; 47 M. 334; 58 M. 608; 60 M. 119; 63 M. 232; 66 M. 467.
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- People v. Parks**, 49 M. 333. Crimes, 18, 26, 27, 623. *Cited*: 52 M. 579.

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- People v. Parkhurst**, 49 M. 22. Crimes, 828.
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- People v. Rounds**, 67 M. 482. Crimes, 477, 727, 738.
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- People v. Sanilac Supervisors**, 71 M. 16 (38 N. W. R. 639). Const., 331; Record., 25; Reg. of Deeds, 5; Tax., 51, 113, 114, 219, 220.
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- People v. Simonson**, 9 M. 492. Appeal, 45. Cited: 20 M. 215; 35 M. 143.
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- People v. Springwells** (Township Board), 12 M. 434. Costs, 277; Highways, 34, 220.
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- People v. Whittemore, 2 M. 306. Const., 492; Offic., 251.

References are to titles and sections.

- People v. Whittemore**, 4 M. 27: See *People v. State Treasurer*, *supra*.
- People v. Williams**, 24 M. 156. Const., 103, 104; Crimes, 288-290: Ev., 205, 1495; Jury, 22. *Cited*: 39 M. 548.
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- People v. Witherell**, 14 M. 48. Elections, 14; Offic., 36; Statutes, 280. *Cited*: 44 M. 91; 64 M. 612.
- People v. Wolcott**, 51 M. 612. Crimes, 905, 1073, 1156, 1172, 1276, 1283; Ev., 1849.
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- Petrie, Miller v., 40 M. 657.
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- Porritt v. Porritt**, 16 M. 140. Divorce, 90. *Cited*: 18 M. 425.
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- Prange, Grand Rapids Bridge Co. v., 85 M. 400.
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- Putman v. Fife Lake, 45 M. 125. Plead., 222; Tax., 179. *Cited*: 47 M. 504; 53 M. 459, 509; 54 M. 385; 56 M. 491; 61 M. 580.
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- Mortg., 784, 787-790, 792. *Cited:* 50 M. 515; 56 M. 5; 58 M. 431.
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- Raynsford v. Phelps, 49 M. 815. *Dam.*, 6; *Mortg.*, 258; *Offic.*, 158; *Tax.*, 404.
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- Richards, Duncombe v., 46 M. 166, 47 M. 646.
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- Romeyn v. Hale**, 1 M. 93. Appeal, 64. *Cited*: 20 M. 216.
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- Saunders, Horton v., 18 M. 409.
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- School District v. Dean, 17 M. 223: See *Osh-temo School Dist. v. Dean, supra*.
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- School District v. School District, 63 M. 51: See *Everett School Dist. v. Wilcox School Dist., supra*.
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- Schut v. Chicago & W. M. R. Co.**, 70 M. 433. Const., 149. *Cited*: 70 M. 623.
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- Stockton v. Williams**, 1 D. 546. Convey., 8; Eq., 483, 489, 900; Estop., 5; Ev., 200, 323, 1337; Injunc., 84; Pub. Lands, 91, 93, 170, 171; Treaties, 4, 12. *Cited*: 2 M. 212; 9 M. 413, 433; 21 M. 82; 22 M. 359; 38 M. 544; 41 M. 788; 55 M. 191; 68 M. 227.
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- Strand v. Chicago & W. M. R. Co.**, 67 M. 330. Carr., 150, 151; Ev., 1453.
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- Strauts, Rix v.**, 59 M. 364.
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- Thatcher v. Hayes**, 54 M. 184. Ev., 521, 1427.
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- Toledo, A. A. & G. T. R. Co., Viets v.**, 55 M. 120.

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- Toledo, A. A. & G. T. R. Co., Waldron v., 55 M. 420.
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- Toledo, A. A. & N. M. R. Co. v. Detroit, L. & N. R. Co., 63 M. 645. Eq., 90; Injunc., 21; Railr., 238, 240, 242.
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- Tompkins v. Hitchcock, 69 M. 123. Contracts (Vol. II, p. 765).
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- Webb v. Rowe**, 35 M. 58. Convey., 338; Mortg., 460; Partition, 7, 8; Tenants in Com., 88.
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- White River Log, etc. Co., Denver v., 51 M. 472.
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- Widner v. Olmstead**, 14 M. 124: See last case.
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- Wiles, Cook v., 42 M. 439.
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- Williams v. Guarde**, 34 M. 82. Contracts, 230; Costs, 207.
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- Wilson v. Davis**, 1 M. 156. Appeal, 418, 462, 487; Contracts, 209; Jurisd., 71; J. P., 244, 252. *Cited*: 15 M. 82.
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- Winnie, Eaton v.**, 20 M. 156.
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